Bar Opposes Jenner Bill To Curb Supreme Court

ATLANTA, Ga., Feb. 26 (AP).—The American Bar Association does not want Congress to try to limit the Supreme Court's jurisdiction over appeals.

The House of Delegates, governing body of the ABA, completed a two-day winter meeting yesterday by adopting a resolution opposing a bill introduced in the Senate by Senator Jenner, Republican of Indiana.

The Jenner bill would take from the high tribunal the right to hear appeals on cases involving congressional committees, executive security programs, State security programs, school boards, or admissions to the bar.

The resolution opposing this proposal was amended from the floor to provide that members of the ABA reserve the right to criticize court decisions and that they do not approve or disapprove them.

As originally drafted by the ABA's Board of Governors at the suggestion of Senator Wiley, Republican of Wisconsin, the resolution opposed the Jenner bill without expressing any opinions on court decisions.

Before ending the meeting, the House of Delegates elected Ross L. Malone of Roswell, N. Mex., as the ABA's president nominee. Sylvester C Smith, jr., of Newark, N. J., was chosen nominee for chairman of the House of Delegates.

The election will take place in August at the ABA's annual meeting in Los Angeles. Mr. Malone succeeds Charles S. Rhyne of Washington, while Mr. Smith takes over from James L. Shepherd, jr., of Houston, Tex.

Mr. Malone, who will be 48 in September, served as Deputy United States Attorney General in 1952-3. He was instrumental in establishing procedure under which the Justice Department consults with the ABA as to qualifications of proposed appointees to the Federal judiciary.

[redacted]

OS. 2646

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N.Y. Times

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4-572 (3-29-55)
STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : The Director

DATE: 2-27-58

FROM : J. P. Mohr

SUBJECT: The Congressional Record

Supreme Court

Page A1795

Senator Talmadge, (D) Georgia, requested to have printed in the Record an editorial entitled "Curbing Supreme Court," from the February 22, 1958, issue of the Augusta (Georgia) Chronicle. It is stated in the editorial "There should be full and free discussion in the Senate of the Jenner bill - S. 2646 - to limit appellate jurisdiction of the United States Supreme Court. The bill has been offered as a means of curbing a recent tendency in the court to assume powers that are not authorized by the Constitution of the United States. ..... In order to undo the damage already done Congress will have to summon up supreme courage to deal with the current situation in a manner that will reestablish Congress as the Nation's lawmaking body. The Jenner bill is an effort to achieve such a restoration of congressional powers. It may need some modifications to make certain that proposed limitations on the powers of the Court will not act also as a limitation of the right of the people to appeal to high authority, but there is no question at all about the need for restoring the Supreme Court to its original function as protector of the Constitution rather than a legislative body."

Original filed in: 66-1731-1453

62-27585-A

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In the original of a memorandum captioned and dated as above, the Congressional Record for 2-26-58 was reviewed and pertinent items were marked for the Director's attention. This form has been prepared in order that portions of a copy of the original memorandum may be clipped, mounted, and placed in appropriate Bureau case or subject matter files.

Substitute Justices Urged for High Court

By JAY G. HAYDEN
North American Newspaper Alliance

While the American Bar Association has declared against the pending Jenner Bill, which proposes to curtail the Supreme Court's power to override congressional and State authority, it has also come up with a suggestion of its own which very well may attract strong support.

This plan, which the ABA approved in principle at its current Atlanta meeting, would require full nine-member participation in decisions of all cases. This would be attained by creation of a panel of judges drawn from among the 87 members of the 11 United States Circuit Courts of Appeal. They would be called up for temporary service on the Supreme Court as needed.

Whenever the Supreme Court was shorthanded, or when sitting judges remove themselves from consideration of a case because of personal disqualifications, the court could summon one or more substitutes to fill the bench for a particular lawsuit.

The Bar Association agreed wholly with the disadvantage of a system by which any judge can withdraw himself, with the effect of causing the Supreme Court to render some of its most important decisions with less than the minimum five-member majority voting either way.

Legal Study Set

But the association appointed a committee to study the legal possibility of bringing in substitutes. The Constitution requires all members of the Supreme Court to be appointed by the President and confirmed by the Senate, and the same principle applies to all other Federal judges.

The question is whether a lower court judge could be advanced temporarily to the Supreme Court by legislative enactment and, if not, just how such a transfer could be attained legall. It could be done, of course, by constitutional amendment.

A recent striking illustration of the effect of an undermanned court was the 4-2 finding last June that E. I. du Pont de Nemours & Co. was in violation of the anti-trust law because of its 23 per cent holding of stock in the General Motors Corp.

Two Disqualify Selves

In that case two justices disqualified themselves, Tom Clark because he had launched the anti-trust action in question as Attorney General under President Truman and John Marshall Harlan because he had been an attorney for the DuPonts. Associate Justice Whittaker could not vote because he arrived in the court too late to listen to arguments in the case.

The crucial point is that any Supreme Court decision by less than overall majority inevitably continues the lawsuit unabated until at least five judges of the high court can be assembled on the same side.

The DuPont indictment for criminal disobservance of the anti-trust law occurred in 1949. It was late in 1954 when United States District Judge Walter J. Labuy of Chicago delivered the first decision in the case, exonerating the DuPonts. Eight years had elapsed before the Supreme Court acted on the case, and then it actually settled nothing.

Negotiations Still On

For nine months since then Judge Labuy has been negotiating for a consent decree but with everybody knowing that neither side will yield without carrying the case back to the Supreme Court. Probably it will be two years more before the issue again reaches the Supreme Court, and then conceivably with a short attendance on the bench.

The high point of Supreme Court short-handedness may have been in 1946 when, with Associate Justice Jackson away conducting the Nuremberg post-war trials, Chief Justice Stone died suddenly.

Even before Justice Stone's death, 15 cases had been set for reargument because the available judges divided four to four.

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N. Y. Times
Daily Worker
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NY Times

JENNER BILL SEEN THREAT TO COURT

Editorial Writer, Hailed by Liberties Union, Warns of Crippling High Tribunal

By MURRAY ILLSON

A warning of attempts to "cripple" the Supreme Court and to "erect spite walls" around it was sounded yesterday at the annual conference of the New York Civil Liberties Union.

The warning was given by Irving Dilliard, editorial writer of The St. Louis Post-Dispatch, after he had received the Florina Lasker Civil Liberties Award of $1,000 for outstanding work in the field of civil liberties.

Mr. Dilliard told the conference's luncheon session that Senate Bill 2646, submitted by Senator William E. Jenner, Republican of Indiana, was intended to "cripple the Supreme Court" because of recent rulings favoring civil liberties.

Vindictiveness Charged

Speaking in the Roosevelt Hotel, Mr. Dilliard declared that the Jenner bill "would have Congress vindictively retaliate against the Supreme Court for some eight civil liberties decisions."

He said that the proposed legislation would bar the court "from appellate jurisdiction in five important fields, such as Congressional investigations and Government employment in loyalty investigations."

He said the bill also would "block the Supreme Court out in cases involving teachers and lawyers caught in the same net." Mr. Dilliard continued:

"The proponents of the Jenner bill and the many other pending attacks on the Supreme Court would have the American people believe that our high bench today is packed with irresponsible jurists of one reckless mind. Actually the nine jurists who make up our Supreme Court now are probably more representative than the members of any previous Supreme Court bench."

Mr. Dilliard noted that of the present Supreme Court justices four owed their commissions to President Eisenhower, three to President Franklin D. Roosevelt and two to President Harry S. Truman. He declared that geographically the justices were "more widely representative of the entire nation than at any time in its history."

'Spite Walls' Seen

After pointing to their widely ranging qualifications for the court, he said:

"The notion that such a group of men, so variously experienced and assembled, would be either deliberately opposed to or thinkingly blind to the security of the American people is ridiculous on its face. Yet there are those among us, including the sponsors of the Jenner bill, who are trying to use that notion to erect spite walls around our highest tribunal."

A panel discussion on "Wiretapping and Eavesdropping" followed the luncheon session. Stanley J. Tracy, Washington lawyer and former assistant director of the Federal Bureau of Investigation, said:

"Uncontrolled wiretapping and eavesdropping constitute a substantial threat to individual liberty, but properly restricted, these activities are essential, if not indispensable, to both national and individual security."

Edward Bennett Williams, Professor of Law at Georgetown University and also a Washington lawyer, said that although Congress had made it a crime to tap telephones or to use information obtained from taps, "the Federal Bureau of Investigation has been and is continuously engaged in this illicit act, and it has gone and is going unchallenged."

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BILL CALLS PERIL TO SUPREME COURT

Editorial Writer, Hailed by Liberties Union, Warns of Proposal by Jenner

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Court Make-Up Hailed

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Service Record Ruled Only Discharge Basis

The Supreme Court ruled 8 to 1 yesterday that the Secretary of the Army cannot consider a soldier's pre-induction activities in deciding the nature of his discharge.

By ruling on the two cases before it, the Court also threw out the Government's argument that the type of discharge a serviceman receives is not subject to court review.

Until yesterday no court had interfered with the military Secretaries' discretion in fixing the nature of discharge. Federal courts are now on notice that they can.

Review Is Ordered

The Court ordered the District Court here to review "in the light of this opinion" cases involving John M. Harmon III and Howard D. Abramowitz, former servicemen from New York. Both were given less-than-honorable discharges for alleged pro-Communist activities before they were drafted.

Charges against Harmon also included a letter he had written after induction urging financial help for the defense of Smith Act cases. The Justice Department indicated it felt this was a trivial charge. Presumably, both will now be given honorable discharges.

Lawyers for the two men said close to 700 other servicemen have been given less-than-honorable discharges solely because of pre-induction activity. Presumably they, too, will be upgraded as a result of the decision.

No Army Comment

The Army had no comment on the effects of the decision. Several months ago, however, it stopped considering pre-induction activities.

The Court in an unsigned opinion disposed of the jurisdictional question quickly. Federal courts have authority to construe laws under which discharges are awarded to determine whether the Secretary exceeded his power, it said. "If he did so . . . judicial relief from this illegality would be available," said the Court.

Once this was settled, the Government's case evaporated. Justice Department lawyers had conceded reluctantly in oral arguments last month that

they agreed pre-induction activities could not be considered.

"We think," said the Court, "that the type of discharge to be issued is to be determined solely by the soldier's military record in the Army."

Clark Lone Dissenter

Justice Tom C. Clark was the lone dissenter. He felt it was the intent of Congress to give the executive branch complete jurisdiction over discharges.

Clark also differed from the majority on use of pre-induction activities. The statute creating the Army Review Board, which reviews discharge appeals, provides that its findings shall be based upon "all available records the Army has on the man." Clark said the majority has changed "all" to "some."

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STATEMENT BY SENATOR WILLIAM E. JENNER

Before Senate Internal Security Subcommittee
(Hearings on S. 2646)
March 5, 1958

In nine days of hearings criticism of my bill S. 2646 has fallen into several categories. I want to discuss these briefly, touch upon the main objections to the bill which have been advanced, and answer them. I won't do this extensively, because I don't think the objections to the bill require extensive answers. But there are a few points I want to make before this record closes.

All of the objections to this bill fall into two main categories: (1) those which involve the claim that the bill is unconstitutional, and (2) those which admit the constitutionality of the bill but object to one or more of the features of it on some other grounds.

Let's look first at the constitutional arguments.

The constitutional arguments against the bill fall into three subclasses:

(1) The argument that the language of Article III, section 2, clause 2 does not mean what it says. This is the argument first advanced by Mr. Joe Rauh when he testified representing Americans for Democratic Action. This is a completely specious argument and has been repeatedly refuted by expert witnesses during the course of these hearings.

(2) That the grant to the Supreme Court of original jurisdiction over cases having a State as Party encompasses a grant of appellate jurisdiction over any case in which a State is a Party, and that this includes cases brought in State courts and involving State statutes. This point not only does not involve any good law, it doesn't even involve any good logic.

As Mr. Frank Ober pointed out yesterday during his testimony, original jurisdiction and appellate jurisdiction are two separate things in law, and are treated quite separately in Article III of the Constitution.

(3) That the provisions of Article III, section 2, clause 2 of the Constitution, respecting the power of the Congress to regulate and make exceptions to the appellate jurisdiction of the Supreme Court, have been somehow negatived by the adoption of some amendment to the Constitution. Two amendments have been suggested as possibly modifying the cited provisions of Article III. They are the Fifth Amendment and the Fourteenth Amendment. Now, the Fourteenth Amendment can hardly be deemed as amendatory of Article III of the Constitution, since the amendment is concerned with actions by the States and Article III is concerned with a grant of power to one of the branches of the Federal Government. The Fifth Amendment, of course, cannot be said to repeal Article III, and is not in any direct and apparent conflict with the provisions of Article III; the Fifth Amendment does, however, protect certain individual rights and if one of those protected rights should be directly interfered with through an exercise of power under Article III, it is conceivable that such an exercise of power might be deemed unconstitutional.

We come then to consideration of whether anything in the Fifth Amendment to the Constitution can be deemed to render my bill unconstitutional.

Principal proponent of the contention that the Fifth Amendment to the Constitution might be considered as a bar to enactment of my bill was Mr. Tom Harris who testified representing the AFL-CIO. Mr. Harris did not say that my bill was unconstitutional; he simply suggested how a court might

find it unconstitutional. It would be necessary, Mr. Harris said, to find that one of the categories in my bill represented an unreasonable classification. Mr. Harris did not express the opinion that any of the categories in my bill was unreasonable; he just said it might be possible for a court to decide that one of them was. Mr. Harris gave some examples of what he considered unreasonable categories—such as a provision which might seek to divest the Supreme Court of jurisdiction to try a case involving a particular named person—and none of the examples he gave was anywhere close to any of the provisions of my bill.

Those are all the arguments that have been made about the constitutionality of the bill. None of them will hold water.

Now we come to the opposition to the bill on its merits.

The American Bar Association passed a resolution opposing the bill on two grounds; first, that the bill was contrary to a position previously taken by the American Bar Association at another time and prior to some of the worst of the recent decisions of the Supreme Court. This is of course a self-serving action. It might be well if the Bar Association were reminded of Emerson's warning that a foolish consistency is the hobgoblin of little minds. The other announced basis for the Bar Association's action was that my bill would be "contrary to the maintenance of the balance of powers set up in the Constitution." As I have already pointed out in a public statement, my bill only proposes to implement one of the basic check and balance provisions of the Constitution; and I fail to see how the use of a constitutional provision can be deemed to be contrary to the spirit of the Constitution.

Various witnesses and others have assumed the right to declare the basis upon which I have predicated this bill. They charge me with seeking to punish the Supreme Court. I would not be adverse to admitting this charge, if it were true; because I think some of the recent decisions warrant punishment, at least to the old-fashioned extent of being required to stand in the corner. But punishment was not the objective of the bill; and in fact, the bill would not and could not punish the Court. The Supreme Court has no vested interest in any case or any class of cases that comes before it. The compensation of the Justices will not be affected in any way if my bill is passed. Working hours will not be affected. If they are held in less repute by some of the citizens of this country than they formerly were, this is not and will not be the result of my bill, but rather the result of the decisions which the Court has handed down. No, the purpose of this bill is not to punish the Court; the purpose of this bill is to utilize one of the basic check and balance provisions of the Constitution for the purpose of restoring a balance which has been seriously upset by the actions of the Supreme Court. The Court has repeatedly sought to legislate. The people of the United States are unhappy about this. They do not have to be lawyers to understand that it is the job of their elected representatives to legislate, and not the job of the Supreme Court; and they do understand this. It is not any particular decision or the provisions of any particular decision which I am attacking with this bill. What I am attacking is the problem of how to overcome a trend--a trend toward judicial legislation by the Supreme Court of the

United States. I concluded that the only way to check this trend was to utilize the provision of the Constitution which I believe was placed there for the purpose of permitting the Congress to act in just such a situation as we now find ourselves in.

It is perfectly clear to me as it must have been perfectly clear to everyone who has examined this question in any substantial degree that enactment of the bill S. 2646 will not repeal or reverse any of the decisions of the Supreme Court about which I—among many others—have complained. This kind of an act cannot reach and affect a decision of the Supreme Court. It may be that by a different kind of an act or acts, the Congress could for the future effect a change in the principles declared by the Supreme Court in some of these recent decisions; and so far as this can be done, I want to see it done, and I will help to do it, where the change will restore the Constitution to its real meaning, where the Supreme Court has warped and twisted and misconstrued it. But I have never thought that my bill would change any of these decisions or any of the Court's interpretations. What my bill will do, I hope, is to push the Supreme Court out of the field of legislation, and back into the area where it was constitutionally intended to operate. My bill is not punitive; it is wholly remedial in purpose.

It has been said in opposition to this bill that, if enacted, it would result in the possibility of diversity of decisions. In order to consider this point intelligently, we must take note of the fact that several different situations are covered in my bill.

With respect to judicial power over congressional investigations, my position is that there should be none; and if my bill should be enacted, and the appellate power of the Supreme Court in this field should be curtailed, we would have none. Lower courts could protect the rights of individuals without attempting to police the investigative powers of the Congress or to assert its legislative powers. It has been the Supreme Court, not the inferior courts, which has sought these unworthy ends.

With respect to the Federal Employee Security Program, I think nearly all of the cases would be brought in the District of Columbia, so that the court of last resort for cases in this class would be, to all effects and purposes, the United States Court of Appeals for the District of Columbia Circuit.

With respect to the enactment of State laws and the conduct of State investigations respecting subversion, with respect to the control of subversive activity in local schools, and with respect to admission of individuals to the Bar of particular States, I feel that a federally-imposed uniformity is extremely undesirable. These are matters committed by the Tenth Amendment to the Constitution to the States, they should be controlled by the people of the various States through their elected legislatures, and whatever they decide to do, the Federal Government should not interfere. States certainly have a right to protect their own welfare; to protect their children; and to choose who shall be the officers of their courts.

It has been argued against my bill that it would have the effect of "freezing" the various Supreme Court decisions in the fields which the bill would affect. This argument depends upon the assertion or the assumption that all lower courts would be absolutely bound by these decisions, even in cases where the lower courts might consider the decisions to be bad law. This argument is just another way of saying that the Supreme Court can make law which neither the Congress nor any other court can change; but that the Congress can do nothing to change a law which the Supreme Court has made, and that the judge of a lower court must adhere to a decision of the Supreme Court rather than to the Constitution as he understands it. I say, that is not the case. The Congress can act, in any one of several ways, and my bill is one of the ways. And a lower court can act, in a way contrary to a Supreme Court decision; because what the judges of our courts are sworn to uphold is the Constitution of the United States, not the Supreme Court of the United States.

Before I close, I want to refer to the letter of the Attorney General of the United States, delivered yesterday and placed in the record yesterday afternoon. First, I want to call attention to the fact that the Attorney General was requested by letter of the Chairman of the Committee on the Judiciary, under date of February 3rd, to appear and testify on this bill. I am informed that letter was never answered. I am informed the Attorney General spoke to the Chairman of the Committee and asked if it would really be necessary for him to come up in person, or if he could send a written report, and that the Chairman told him if he didn't

want to come, a written report would be all right. I take that to mean that the Attorney General did not in fact want to come up and testify before this committee, and subject himself to questions; he preferred to file a report in writing and have it sent up here by messenger.

We have been trying to get this report from the office of the Attorney General for some two weeks now; and the word always has been that the report was in process. They were "working on it." I had visions of a long and carefully-drafted and well-documented and erudite report, that would give us some help in our consideration of this bill. But no. That is not what we got. We got a two and a half page letter addressed to the Chairman of the full Committee, which starts out:

"Dear Senator:

"Because of the importance of the subject, I am taking the liberty of stating my views on the bill S-2646. . ."

That doesn't even indicate that the Attorney General knows he has been asked to testify on this bill. That sounds like he was telling us he is sending us his opinion voluntarily. How can he be "taking the liberty" of stating his views, when he has been asked in writing by the Chairman of the Committee to do so?

Well, the Attorney General's letter goes on for another two pages. The second paragraph summarizes what the bill provides.

Then the third paragraph starts off with this sentence:

"In the first place, it is clear that this proposal is not based on general considerations of policy relating to the judiciary."

Now where do you suppose the Attorney General got that idea? How can he say it is clear to him on what basis I based my proposal? He has not talked to me about it. The Attorney General goes on:

"It (my proposal) is motivated instead by dissatisfaction with certain recent decisions of the Supreme Court in the areas covered and represents a retaliatory approach of the same general character as the court packing plan proposed in 1937."

This is one of the specious arguments against the bill which has been repeated by various thoughtless witnesses; but I never thought I would hear the Attorney General of the United States repeat it.

I am of course interested to hear that the Attorney General disapproved the "court packing plan" in 1937.

Now, let me point out what the real relationship is between the court packing plan and my bill. In the first place, the court packing plan was an effort to influence the Court so as to bring about a particular kind of decision. My bill is an effort to halt the incursions of the Court into the legislative field. The court packing plan advanced by President Roosevelt sought to influence the Court by increasing its size and thereby changing its philosophy. My bill does not seek to change the philosophy of the Court in any way - I do not believe that to be

possible--but rather to set up a barrier against the philosophy which the Court has been evidencing.

One more point needs to be brought out: the liberals who favored the court packing plan in 1937 have been making a good deal of the fact that they appear now as defenders of the Court, in opposition to my bill. But, they have not changed their position one iota. The liberals opposed the Court in 1937 and favored the court packing plan because they were anxious to secure Supreme Court approval for social and other legislation which would change the face of America and lead to increased centralization of government and the destruction of States' Rights. The liberals who oppose my bill today are doing so for exactly the same reasons. It is the Supreme Court which has changed its position in the interim, not the liberals, and not Bill Jenner.

Well, now we come to the fourth paragraph of the Attorney General's letter. He says that the Congress has only enacted legislation of this kind once before, that this was in 1868, and that "because it realized that this was a mistake Congress reversed itself, restoring the jurisdiction in 1885." I do not know whether the jurisdiction which the Congress took away from the Supreme Court in 1868 was restored 17 years later because Congress realized that it had made a mistake 17 years before, or because the situation had changed in the intervening 17 years. I can foresee the possibility that if my bill passes, another Congress 17 or 20 years from now might see fit to restore the jurisdiction which this bill would take away, on the ground that in the meantime the Supreme Court had learned to stay within its proper orbit,

and could once again be trusted with matters in these fields. However that may be, I do want to call attention to the fact that Congress did on a previous occasion make use of the same constitutional provision which I would make use of through the enactment of my bill S-2646, and that the Supreme Court of the United States considered the matter and held the bill to be constitutional, and bowed to its provisions. The Attorney General apparently does not think that the question of constitutionality of the bill is sufficiently important to receive any mention in his report.

On page 2 of his report, the Attorney General raises the question I have already discussed, with respect to the possibility of different rules of decision in different circuits and in different State courts. I have already spoken about that question, but I will add this: There may be some argument for uniformity of decision among the circuit courts of appeals; but there is no logical argument for uniformity in the decisions of the courts of the States. The State courts are exercising residual powers. The Federal courts are exercising only specified powers granted under the Constitution. We do not demand that all of our States be alike. We do not demand that they think alike on matters of public policy. There is no reason for demanding that their courts think alike or adhere to identical rules of decision. There are in fact many subjects today on which there are different rules of decisions in the various State Supreme Courts; and no one has been suggesting that there should be Federal legislation or Supreme Court legislation to force uniformity.

The Supreme Court does not make it a practice to accept all cases which involve decisions of the courts of appeals which may differ from decisions of other circuits.

The Attorney General goes on to declare that "Full and unimpaired appellate jurisdiction in the Supreme Court is fundamental under our system of Government." That must be the Attorney General's opinion; because it is not the Constitution; and I guess we are supposed to consider the Attorney General's opinion more fundamental than the Constitution. The Constitution contains the provision in Article III, section 2, clause 2, giving the Congress the right to make regulations and exceptions with respect to the Supreme Court's appellate jurisdiction. That certainly is not "full and unimpaired" appellate jurisdiction. So we have this situation: the Attorney General is declaring as fundamental something that the Constitution not only does not provide for but specifically provides against. Personally, I'll take the Constitution!

The Attorney General goes on to indicate that he regards the Supreme Court as the "final arbiter" in "the maintenance of the balance contemplated in our Constitution as among the three coordinate branches of the Government." But the whole theory of our Constitution is that there should be no "final arbiter"--because the Founding Fathers understood that if any one branch of the Government got complete ascendancy, we would not have a government of checks and balances, but an oligarchy which would lead unquestionably and irresistibly to tyranny. The Constitution did not make the Supreme Court the "final arbiter"--nor did even Mr. Justice Marshall, in Marbury v. Madison. Marshall said there were "some cases" in which

the Court should consider questions of policy. He did not say that the Court should consider questions of policy in all cases. Now it happens that the case of Marbury v. Madison was tried without a jury; and, therefore, naturally, the Court was allowed a much wider latitude than it would have been if this had been a jury case.

The genius of the Constitution is that it does not provide for a final arbiter; it does provide for checks and balances which may be used by the different branches of the Government, one against the other, to guard against or to repel encroachments. It is this very system of uneasy balances which gives the citizen his best guarantee that his rights will continue to be observed. For once all power is put in a single place, so surely as "power corrupts and absolute power corrupts absolutely" the individual rights of citizens are doomed from that day on.

At the top of page 3 of his report, the Attorney General says: "This type of legislation threatens the independence of the Judiciary." That statement simply is not so. This bill does not threaten the independence of the Judiciary, and it does not threaten our system of checks and balances. What it does threaten is the imbalance which has been created by decisions of the Supreme Court in recent years. It threatens the power to legislate which the Supreme Court has arrogated to itself during those years. It threatens the status quo, the situation which favors the growth of big central government and the decline and decay of States' Rights. There are a great many people in this country today who favor that status quo, who want to see it preserved, and we must now assume the

Attorney General of the United States is one of them. But that does not justify him in confusing the status quo with the independence of the Judiciary. Well, so much for the report of the Attorney General. I wanted to mention it, because I think that when the Attorney General of the United States expresses an opinion upon proposed legislation, it should be important. In this case, I think he has been badly advised.

In closing, I want to repeat in new words what I have said many times before, and at least once here: I introduced this bill not out of any spirit of retaliation, but out of a deep concern for the preservation of the Constitution of the United States as it was meant to be, and our American way of life as we used to know it. I have introduced this bill in an effort to secure action by the Congress which would help to restore the balance between the respective branches of the Federal Government, and to restore to the States a measure of their rights, guaranteed under the Tenth Amendment of the Constitution, but which have been stripped from them, notwithstanding that guarantee, by judicial legislation. I am not wedded to any line or word of this bill. There have been some suggestions during these hearings respecting possible amendments to the bill, and I am willing to sit down with the committee and consider any of those suggestions. If the Committee can agree upon different language, even representing in part or in whole a different approach to this problem, but which will be effective in achieving the objective I have sought, the Committee will find me ready to go along. I will support this bill or any other bill which I think will help to limit the Supreme Court to its proper sphere of action, to restore to the Congress autonomy over the con duct of

its own affairs, and to preserve for the States the rights and powers which they reserved when the Federal Government was created, and which are guaranteed to them under the Tenth Amendment to the Constitution of the United States. I think my bill S. 2646 will go a long way in that direction, and I am going to be for it with all the force I can muster. If you can show me a better way, or even another good way, to accomplish the same purpose, you can count on my support. I have no pride of authorship. I am not trying to pass a "Jenner Bill." I am just trying to get a job done--a job that urgently needs doing.

The Knoxville Journal

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People Have Reason To Be Mystified When High Court Calls One Right

This week the US Supreme court astonished the country by rejecting the appeal of 23 Hollywood actors and writers who had originally sued for some $56,000,000 in damages because they were fired, and they charged blacklisted by other employers, for having taken the Fifth Amendment under questioning by the House Un-American Committee. The California state courts had ruled against them and the decision of those courts now stands in view of the high bench's ruling.

We say the country was astonished because in recent months the Supreme Court through a series of rulings has manifested the tenderest kind of feeling for assorted criminals, including the Communists and fellow travelers who have manifested certain segments of our economy.

In this case, of course, the California state courts were dead right and so was the high court. The point is that many of us are so accustomed to the court's whimsical and irresponsible rulings that when it gets right on one we are mystified.

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Mr. Mohr
Mr. [redacted]
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Mr. Trotter
Mr. Clayton
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THE KNOXV
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Knoxville
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3/5/58

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Today in National Affairs

Judge Hand Seen Debating Court's 'Legislative' Role

By DAVID LAWRENCE

WASHINGTON, Mar. 9.—Perhaps the most remarkable comment on the all-important issue of how far the Supreme Court of the United States shall be permitted to develop into a "third legislative chamber" has come from Judge Learned Hand, retired.

David Lawrence

He is one of the most respected and most famous members of the Federal bench. The three lectures he recently delivered before the Harvard Law School have just been published by the Harvard University Press, and they leave no doubt that in his opinion the Supreme Court overstepped its powers in the way it ruled in the "segregation" cases.

In the last few days Judge Hand's lectures have been the subject of much favorable comment at the Capitol here among Senators who all along have felt that the Supreme Court has been usurping legislative power.

Known as "Liberal"

Judge Hand sat for many years on the United States Circuit Court of Appeals in New York City. He is known as a "liberal," but he is also known as a fearless judge who did not allow considerations of political expediency or emotional feelings to impair his reading of the Constitution or his study of the basic precedents established by the courts in previous years. In his day, Judge Hand's opinions were usually accepted by the Supreme Court because of their persuasive interpretation of the "law of the land."

Judge Hand finds himself perplexed by the decisions in the "segregation" cases. He says it is "curious" that the Supreme Court failed to mention Section Three of the Fourteenth Amendment, "which offered an escape from intervening, for it empowers Congress to 'enforce' all the preceding sections by 'appropriate legislation.'"

On Court's Role

Judge Hand, after endeavoring to analyze the Supreme Court's 1954 opinion in the "segregation" cases, says:

"I must therefore conclude this part of what I have to say by acknowledging that I do not know what the doctrine is as to the scope of these clauses. I cannot frame any definition that will explain when the court will assume the role of a third legislative chamber and when it will limit its authority to keeping Congress and the states within their accredited authority."

Judge Hand says, moreover, that he "has never been able to understand" on what basis the Supreme Court adopted the view that it may actually legislate. He asks whether we should establish a "third legislative chamber," and then adds:

"If we do need a third chamber, it should appear for what it is, and not as the interpreter of inscrutable principles."

Not by Appointment

Judge Hand, however, doubts whether any judge should be permitted to "serve as a communal mentor" and deplores any wider form of judicial review that is based on the "moral radiation" of court decisions.

Judge Hand says, in effect, that the Supreme Court these days is not following the Constitution or the precepts of the "founding fathers." If there is to be a "third legislative chamber," Judge Hand doesn't want its members serving by appointment.

He writes:

"For myself it would be most irksome to be ruled by a bevy of platonic guardians, even if I knew how to choose them, which I assuredly do not. If they were in charge, I should miss the stimulus of living in a society where I have, at least theoretically, some part in the direction of public affairs.

"Of course I know how illusory would be the belief that my vote determined anything; but nevertheless, when I go to the polls, I have a satisfaction in the sense that we are all engaged in a common venture."

Parliamentary System

This is but another way of saying that, if the Supreme Court is to write new laws and new amendments to the Constitution as, in effect, has been done in recent years, then it is much better to intrust such power to a legislative body for whose members the citizen can vote in approval or disapproval. In a broad sense, this is what parliamentary governments do. They are elected by the people and they write the "supreme law of the land."

Congress is today face to face with the issue of whether the Supreme Court as a "third legislative chamber" should continue to usurp power. Bills are pending and hearings are being held currently by the Senate Judiciary Committee to determine the limits that shall be placed by law on the power of the Supreme Court to decide certain types of cases. The Constitution explicitly gives Congress the power in certain instances to limit the authority of the Supreme Court. It will be interesting to see whether Congress will abdicate its functions by inaction or stand up for its right to conduct its own legislative business, including the power to set forth the rules that shall govern its committees in conducting hearings and inquiries so as to assure itself of the information necessary for law making.

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Bar Strongly Opposes, but Mail Backs Jenner Bill to Curb Court

By Richard L. Lyons
Staff Reporter

THE Senate Judiciary Committee has received an interesting a range of letters as it did witnesses on Sen. William E. Jenner's (R-Ind.) bill to curb jurisdiction of the Supreme Court in security cases.

Lyons

A check of about half the letters received by the Internal Security Subcommittee showed 360 persons for the bill and four opposed. They were from private citizens and patriotic societies who felt the Supreme Court has made things easier for subversives and should be set down. Half the letters were from Texas, California and Florida. Most of those came from Dallas, Los Angeles and St. Petersburg.

A completely different type of response was reported and put in the record of the hearings by Sen. Thomas C. Hennings Jr. (D-Mo.), staunch opponent of the bill, who polled law-school deans and leading lawyers.

Hennings wrote to 100 deans and 50 lawyers and received replies from half of them. All the practicing lawyers and all but four of the deans opposed the bill. Those opposed included Dean Leon H. Wallace of the Indiana University Law School in Jenner's home state.

Others opposed included Dean Erwin N. Griswold of Harvard Law School; John Lord O'Brian, a senior member of the Washington law firm of Covington & Burling; Arthur E. Dean, American representative at the Panmunjom peace talks in 1953 and member of the New York law firm of Sullivan & Cromwell.

THE BILL would strip the Supreme Court of authority to review cases involving the power of Congress to investigate the Federal employes security program, state anti-subversive laws, school boards' anti-subversive rules and admission of lawyers to state practice.

Three weeks of hearings by the Internal Security Subcommittee brought endorsement from a long list of ultra-conservative spokesmen and opposition from the Justice Department, American Bar Association and many newspapers including the conservative Chicago Tribune. The parent Senate Judiciary Committee may act on it today.

Letters on both sides follow a general pattern. Those in favor of the bill feel the Court has helped the cause of communism by decisions like Watkins (which held a congressional committee must tell a witness how its questions relate to its legislative function) and Nelson (which said states must get out of the Communist-hunting business because the Federal Government preempted the field with the Smith Act). They propose to prevent what they consider bum decisions by killing the umpire.

SEVERAL of the letters favoring the bill cited the Mallory decision limiting powers of Federal officers to question a suspect before arraignment. The Mallory rule is not involved in Jenner's bill. Most of these letters did not read like lawyers' arguments. But they were not the identical form letters often produced by a pressure campaign. The Subcommittee staff said it had some of those and had kept them out of the record.

Those opposed to the bill usually made the argument that the bill would create "legal chaos" by removing the one Court that can interpret the law for the whole country. They say it would destroy the last and most important step of the cherished and needed tradition of judicial review. Many question and some challenge its constitutionality.

O'Brian, an elder statesman of American law, wrote that he was "unalterably opposed" to the bill. He called it "an attempt to strip citizens of the protection of judicial review by the highest [illegible] our land . . . a protection that has existed since the first days of our Republic."

It is a "direct attack on our Federal system of Government," he said, "threatens the independence of our judiciary and brushes aside as unimportant all considerations of personal freedom. It is so sweeping and so squarely at odds with our constitutional system as to cast grave doubts on its constitutionality."

The Constitution permits Congress to regulate the appellate jurisdiction of the Court. But the Constitution must be read as a whole, said O'Brian. He said a law enacted under one provision of the Constitution could violate others.

The Jenner bill, said O'Brian, strikes "at the heart of the Supreme Court's functions as one of the three coordinate branches of the Federal Government, as impartial arbiter of Federal-State relationships and as historic protector of the freedoms of the individual."

WROTE Dean:

"Judicial review of the acts of legislatures, governmental bodies and officials is one of the fundamentals of our American constitutional system . . . (The Jenner bill) seriously infringes the doctrine of judicial review as we have known it since the days of John Marshall . . . The Supreme Court of the United States is the only court in our system which can perform the important task of judicial review in all its aspects, since the Supreme Court alone is empowered to review decisions of both the State and Federal courts."

Enactment of the bill, said Dean "might well lead to legal chaos in that the same legal questions could be decided differently by two Federal courts of appeal or by a State supreme court and a Federal district court." This would mean "the supreme law of the land might be different for persons depending on where they live."

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"The Communist menace is real, said Dean, "but the question is whether we should change our own historical institutions that have worked well or reasonably well for about 170 years because we are faced with certain evils." He thinks not.

Dean Griswold of Harvard called the bill "probably constitutional" but contrary to the Constitution's spirit.

"It is of the essence of the Constitution," he wrote, "that we have an independent judiciary. We will not have an independent judiciary if the Congress takes jurisdiction away from the Supreme Court whenever the Court decides a case that the Congress does not like."

He compared the bill to Franklin D. Roosevelt's Court-packing plan which he considered equally "unwise and unnecessary."

"The Supreme Court is an essentially conservative institution," said Griswold. "It is in the nature of things that it should be the subject of controversy, since the questions which come before it are difficult and important ones. But the Court is the balance wheel in our Government . . . It keeps us from swinging too far one way or the other. Throughout our history, the Court has, on the whole, performed well the essential function of keeping our Government on a sound middle course . . . If the Supreme Court is once made subservient (to the other branches) a great conservative influence which has played a key part in the successful functioning of our Government would be substantially impaired."

Everyone is free to criticize the Court's decisions, said Griswold. Sometimes they deserve it, he added. But to take away its review authority in a difficult and lively area of the law would, he said, solve no problems and could turn the law of the land into a "patchwork."

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Court-Packing in Reverse

ATTY. GEN. William P. Rogers made out a good legal and judicial case against Sen. William Jenner's bill to strip the Supreme Court of some of its authority.

Sen. Jenner would take away the court's authority to review cases involving congressional investigations, state rules governing admissions to the bar and security charges against public employes.

Mr. Rogers properly reasoned that this bill would threaten the balanced system of government, based on our traditional separation of powers. And, since it would permit lesser Federal courts to pass on these questions, it would lead to conflicting judgments and hence the utmost confusion.

MOREOVER, as he said, this is a retaliatory measure, arising from the personal dissatisfaction of Sen. Jenner and others with some recent Supreme Court decisions. Legislation passed in an atmosphere of revenge seldom is sound.

We, too, have disputed some of these decisions. But we must assume the court expressed its honest judgment. And in some cases the trouble lay in Congress' own acts, not in the court's interpretations.

In any case, the Senate is directed by the Constitution to "advise" as well as consent to appointments to the Federal bench made by the President. That doesn't merely mean patronage advice from the Senator in whose state a judicial candidate may live.

INSTEAD of passing a punitive law, directed at the present Supreme Court justices, the Senate would do well to encourage the present general tendency of the Eisenhower Administration to choose for the Federal courts the ablest men available, preferably by promotions for the circuit or district courts.

The Jenner bill is a form of court-packing in reverse, and the Senate, in that notable battle of 1937, rejected court-packing in principle.

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Jenner Court Bill Seen Dying in Committee

By the Associated Press

A bill by Senator Jenner, Republican of Indiana, to curb the power of the Supreme Court is reported to be facing defeat in the Senate Judiciary Committee.

Sources close to the committee say that a majority of the 15 members now opposed the controversial measure, although the possibility of a compromise was not ruled out.

A possible showdown vote on the issue today was washed out when the committee's regular weekly meeting was canceled because several members will be away.

The bill has been denounced by opponents as the most serious assault on the independence of the judiciary since the late President Roosevelt's unsuccessful effort in 1937 to enlarge the membership of the Supreme Court with his so-called "court-packing plan."

But Senator Jenner, accusing the court of usurping legislative functions, contends his bill simply makes use of a congressional check on judicial power that is expressly set out in the Constitution as part of the system of checks and balances.

Limits Jurisdiction

What the bill would do is to limit the Supreme Court's appellate jurisdiction by withdrawing its authority to review lower court decisions in five categories of cases.

These are cases arising from congressional investigations, security firings of Federal employes, State anti-subversion laws, regulations of school boards or similar bodies concerning subversive activities by teachers, and the admission of lawyers to practice in State courts.

In each of these fields, the Supreme Court recently has handed down controversial decisions.

In the Nelson case, for example, the court threw out State anti-subversive legislation on the ground that the Federal Government had pre-empted the field. In the Cole case, it held that a statue providing for summary dismissal of Federal employes as security risks applied only to sensitive jobs.

The court also found in two cases last year that excluding lawyers from practice on charges of past or present subversive activity violates the 14th Amendment. In another case, it ruled that a school teacher cannot be fired solely because of invoking his Fifth Amendment protection against self-incrimination.

Questions Must Be Pertinent

In still another controversial decision, in the Watkins case, the court said that congressional committees have no power of "exposure for exposure's sake" and cannot compel witnesses to answer without showing their questions are pertinent to a valid legislative purpose.

Under Senator Jenner's bill, no appeals could be taken to the Supreme Court on all future cases in these fields. Instead, the final decisions would rest with the highest courts in each of the 48 States and in the 11 Federal Circuit Courts of Appeal.

This is what has given rise to the argument of opponents that the bill would cause "legal chaos," that "we would have not one but 59 Supreme Courts."

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Supreme Court Asked to Clarify Watkins Case

By HOWARD L. DUTKIN
Star Staff Writer

The Supreme Court has been asked for "judicial clarification" of its controversial ruling in the Watkins case.

Such clarification "is urgently needed for the administration of justice in the lower courts," the high court was told in a brief filed by attorneys for Lloyd Barenblatt, 35, former Vassar College psychology instructor.

In the brief, the attorneys are seeking Supreme Court review of Barenblatt's conviction on charges of contempt of the House subcommittee on Un-American Activities. The educator had refused to answer a number of questions, including whether he was a Communist. His refusal was based on the First Amendment safeguard of freedom of speech and belief.

Court's Specification

In the landmark Watkins decision, the Supreme Court held that witnesses before congressional committees must be told clearly just what is being investigated and exactly how the questions asked are pertinent to the investigation.

The court also, in the opinion written by Chief Justice Warren, sharply criticized the resolution setting up the House Committee on Un-American Activities as "excessively broad" and vague as to the duties of the committee.

Because of this criticism, some lawyers and judges have interpreted the Watkins decision as meaning that no conviction of contempt of the House committee can stand because of the flaws in the enabling resolution.

Other students of jurisprudence have termed the blast at the House resolution just dictum—the expression of the court's viewpoint on one facet of the case but not a viewpoint bearing on ultimate determination.

The majority of the U. S. Court of Appeals for the District was of this opinion last January when it affirmed Barenblatt's conviction, 5 to 4.

The majority opinion, written by Judge Walter M. Bastian, declared in part: "We believe that if the court had intended to strike down the resolution, it would have said so in so many words. . . ."

But Chief Judge Henry W. Edgerton and Judge David L. Bazelon said they interpreted the Watkins decision as meaning the House Committee has no authority to compel testimony because it has "no definite assignment from Congress." Two other judges also dissented but on different grounds.

General Objective

The resolution setting up the House committee empowers it, in general, to investigate the spread of "un-American" propaganda and activities.

The ultimate outcome of nine contempt appeals now awaiting argument in the United States Court of Appeals for the District are linked to any Supreme Court decision in the Barenblatt case.

Among these cases, to be argued one after another on undetermined dates next month are the contempt convictions of Playwright Arthur Miller; Librarian Mary Knowles of Plymouth Meeting, Pa.; William Price, New York newspaperman; Herman Liveright, New Orleans television executive; Goldie Watson, former Philadelphia school teacher; Shelton Roberts, New York newspaperman; Norton A. Russell, scientist of Yellow Springs, Ohio; John Gojack, United Electrical Workers organizer; and Bernard Deutch, University of Pennsylvania post graduate student. Assistant United States Attorneys William Hitz and Harold Rhyne dance will represent the Government.

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Four to Four

The Supreme Court's four-to-four decision in the *Gaslight* case came only two days after Representative Keating discussed ways and means of preventing such even divisions on the high bench. Four-to-four decisions undoubtedly create a bad impression. They leave the country's ultimate decider of legal issues on the fence. The various remedies which have been proposed to assure nine-justice participation in all cases before the Court might, however, cause more difficulty than an occasional four-to-four decision.

It is well to remember that an even split in the Court does not leave the case undecided. The effect is to make the lower court decision prevail. This is not very satisfactory to litigants who have carried their case to the highest tribunal. Yet the alternative courses must be carefully weighed. Mr. Keating has suggested three possibilities: (1) Creation of a panel of judges from the United States Courts of Appeals which could be drawn upon to give the Supreme Court nine judges in every case; (2) the use of retired Supreme Court justices for this purpose; and (3) authorization of the Supreme Court to sit in three-judge panels in some cases.

It would be possible also to name an alternate justice who would fill in when regular members are ill or disqualify themselves. But all of these proposals create practical or theoretical difficulties. Who, for example, would choose a circuit judge to sit in any particular case? The person choosing the substitute judge might in fact be deciding the case. This problem would be minimized by using retired Supreme Court justices, but in many instances such justices would not be available.

The idea of having the Supreme Court sit in panels of three, as do the circuit courts, seems to be clearly unconstitutional. The Constitution established one Supreme Court, and the nature of its function as a final arbiter should preclude any attempt at splintering.

An alternate justice, serving the same purpose as do alternate jurors in some cases, might have the virtue of simplicity but would give rise to other objections. This would be a difficult role to fill satisfactorily, and a five-to-four decision in which the alternate joined might bring as much criticism as a four-to-four decision by the regular members. Sometimes critics of the courts are inclined to say that judges should not disqualify themselves, but this would mean the participation of judges who in their own minds doubt their objectivity. Certainly nothing should be done to discourage disqualification where reason for it exists. Perhaps the answer is that an occasional four-to-four decision is less disadvantageous than any of the presently suggested correctives.

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Chief Justice Warren

THE MAN IN THE NEWS

A COURT UNDER FIRE

After two decades, there's trouble again about the Supreme Court. It's under fire, and so, too, is its Chief Justice, Earl Warren.

Critics are accusing the Court of making its own laws, of rewriting the Constitution to fit its own philosophies.

The 1937 attack on the Court came from the New Dealers. President Roosevelt produced his "Court packing" proposal which was defeated in the Senate. Today, it's the more "conservative" elements that are dissatisfied.

Mr. Warren is criticized in some quarters as the leader in major shifts of the Court's position.

THE SUPREME COURT again is in the middle of a squabble, the target of an attack that shows no signs of abating. Much of the criticism is directed at the high tribunal's top man, Chief Justice Earl Warren.

Mr. Warren, in his nearly four and a half years in office, has led, many critics say, a "revolution" in the Court's attitudes on issues affecting numerous groups and individuals. As things stand:

- The South is agitated over racial integration in the schools.
- Congress is aroused over limitations on the powers of its investigating committees and the Government's right to fire employes accused of subversion.
- Law-enforcement officials complain of decisions that make it harder to obtain the conviction of admitted criminals.
- State authorities are displeased over rulings that make federal enactments supreme over State laws in the field of subversion.
- Lawyers assert that long-standing precedents have been struck down, that the Court has been writing its own laws, its own amendments to the Constitution.

Echoes of FDR battle. All this, for many in the capital, is sharply reminiscent. It was only 21 years ago that the Court was in a power struggle with President Franklin D. Roosevelt. The Court was striking down one New Deal enactment after another.

Mr. Roosevelt brought forth his "Court packing" plan. The Senate, after a prolonged and famous battle, defeated it. But Mr. Roosevelt won in the end. Chief Justice Charles Evans Hughes shifted his ground, led the Court to a more moderate attitude toward the New Deal. Meanwhile, retirements and deaths gave Mr. Roosevelt an opportunity to appoint new members.

In that battle, it was the "liberals" in Congress who were attacking the Court. Today, it is the "conservatives," aroused at the changes the present Court has made.

Chief Justice Warren has had a hand in bringing about most of the changes involved in these complaints. The changes have occurred since he took office in the autumn of 1953, as President Eisenhower's first appointee to the High Court. Nearly all the changes have come with his approving vote.

Critics in Congress, for the most part, are Southerners, who dissent on the school-integration decision, and "conservatives" from the North. Meanwhile, there also are indications that the Administration is none too happy over some Court rulings.

Moves to curb Court. Congressional critics are fostering legislation to fence the Court out of areas into which some of its decisions under Chief Justice Warren have moved.

Senator William E. Jenner (Rep.), of Indiana, last week was pushing a bill to forbid Supreme Court review in these fields: Cases arising from congressional investigations and citations for contempt of Congress. The antisubversion program for federal employes. State laws dealing with subversion. School-board regulations having to do with subversive activities by teachers. The admission of lawyers to practice in State courts.

The Jenner bill has attracted wide attention and substantial support. But it also has drawn the disapproval of the Administration and the American Bar Association. There is little expectation that the measure will be approved, but the support it is receiving is considered indicative of the prevalent dissatisfactions with the Court.

Question of experience. Other measures are pending, too. One would deny the federal courts

Earl Warren: Chief Justice, chief target

USN&WR Photo

jurisdiction over local administration of the schools. This, of course, is aimed at striking down the integration decision. Another would require that all Supreme Court Justices have five years' previous experience on the bench. Mr. Warren had no previous judicial experience—nor did nine of his 13 predecessors as Chief Justice.

Congress, meanwhile, has taken action to ease the effect of one decision, a 7-to-1 verdict with Associate Justice Tom C. Clark dissenting. Under this decision, Federal Bureau of Investigation files must be opened to a defendant, if they are used against him at his trial. A law passed by Congress sets up certain safeguards that allow the FBI to maintain the secrecy of some parts of such files.

In another case, this one a unanimous decision, the Court held that a confessed rapist must be acquitted because seven and one-half hours elapsed between the time of his arrest and his arraignment. During the interval he confessed to the crime. Washington, D. C., police authorities complain that, without questioning before arraignment, many suspects must be released for lack of evidence and numerous crimes must go unsolved.

The consequences of this decision in Washington have appalled numerous members of Congress. A House subcommittee is drawing up legislation to ease the effect of the ruling, insofar as it can be eased. Prospects of passage are considered good.

From the seclusion of the Court, Mr. Warren, of course, has had nothing to say about the criticism directed at the tribunal or the legislation that is pending.

Son of California. Mr. Warren—67 on March 19—came to the Court in the autumn of 1953 after a long career in the bustle of California politics. He had been a crusading, crime-busting district attorney, attorney general of the State, and popular three-term Governor. In 1948, he was the Republican Party's vice-presidential nominee as the running mate of Governor Thomas E. Dewey of New York, the presidential candidate.

In California, Mr. Warren acquired a reputation for somewhat aggressive "liberalism." He championed public power, compulsory health insurance, a State Fair Employment Practices law, liberalized social-security benefits, collective bargaining. He termed himself a man of the center, a "progressive conservative." Former President Harry S. Truman once said of Mr. Warren: "He's really a Democrat and doesn't know it."

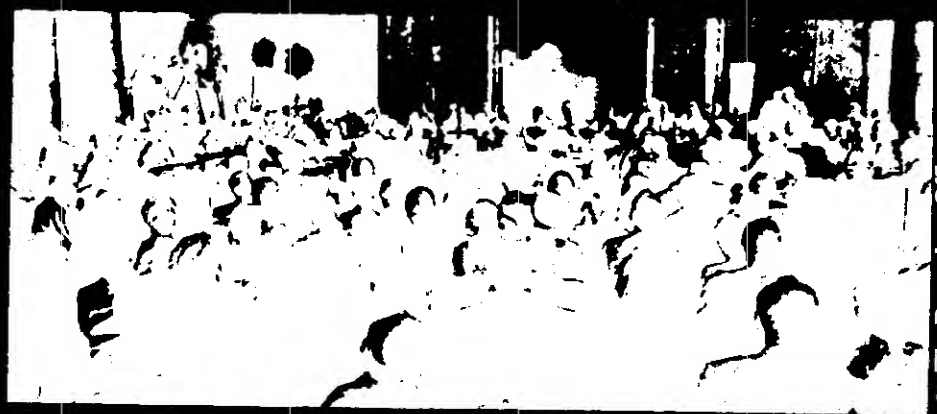
Mr. Warren is a big man with a friendly smile. He always has liked people, enjoyed having them around. Nevertheless, he quickly made the transition to the bookish, secluded life of a Supreme Court

(Continued on page 60)

FOUR REASONS WHY SUPREME COURT IS CRITICIZED

CRIME—Police complain High Court rulings make convictions harder to get

MIXING SCHOOLS—Decision brought troops to Little Rock, unrest to South



CLAMP ON CONGRESS—Congressmen, aroused over decisions that have limited the power of investigating committees, are seeking in turn to limit the Court

Photos: U.S.N.&W.R. Keating from Black Star

RULINGS ON U. S. WORKERS—A bill in Congress would forbid Supreme Court review in several fields, including antisubversion program for federal employes

[continued]

A COURT UNDER FIRE

Justice, winning praise from associates for the way he settled down to work.

What Hughes said: The Chief Justice is the Court's chief administrative officer. When it comes to settling cases, however, he has only one of nine votes. Chief Justice Hughes wrote:

"The Chief Justice as head of the Court has an outstanding position, but in a small body of able men with equal authority in the making of decisions, it is evident that his actual influence will depend on the strength of his character and the demonstration of his ability in the intimate relations of the judges. . . .

"Courage of conviction, sound learning, familiarity with precedents, exact knowledge due to painstaking study of the cases under consideration cannot fail to command the profound respect which is always yielded to intellectual power conscientiously applied."

With no previous judicial experience, Mr. Warren of course lacked knowledge of legal precedents. He set about acquiring it, did his homework thoroughly. In the conferences at which the Court comes to decisions, he spoke up confidently. His colleagues soon were privately praising him for his industry and courage.

The "liberal" Mr. Warren soon found himself frequently aligned with Associate Justices Hugo L. Black and William O. Douglas, who had been appointed by President Roosevelt. The appointment of Associate Justice William J. Brennan, Jr., by Mr. Eisenhower, gave the group another ally. With the occasional backing of other and more "conservative" Justices, Mr. Warren found himself increasingly in the majority in disputed decisions.

The segregation issue. The Chief Justice's first really striking triumph came when he scarcely had been six months on the Court. This was the unanimous decision against racial segregation in the schools.

As the story is pieced together by those in a position to know, unanimity against segregation did not come readily. It had to be brought about slowly, by a painful process of compromise and accommodation. Mr. Warren exerted all his newly found leadership to obtain it.

The decision was widely acclaimed by Northern "liberals." In the South, and in some other quarters, however, it was criticized and continues to be criticized as having no basis in either the law or the Constitution. In these quarters, it is denounced as primarily an assertion of Chief Justice Warren's personal philosophy.

The racial-integration ruling has provoked widespread defiance across the South. Defiance resulted in the dispatch of federal troops to Little Rock, Ark., to enforce integration there. Southern States have built up a complex of statutes to preserve segregation. One by one they are struck down by the courts. But it is a long process and the end is scarcely in sight.

Many of the Court's critics consider the segregation decision an example of constitutional amendment by the Court, of legislation written by the Court. A distinguished jurist, now in retirement, Learned Hand, of the U. S. Court of Appeals in New York City, recently said the Court had developed into a "third legislative chamber"—that is, in addition to the House and Senate.

International News Photo

SENATOR JENNER drew wide attention with his bill to curb the Supreme Court

Growing resistance. The present resistance to the Court, the "Warren Court," as it sometimes is called, does not have the tremendous power of the Presidency behind it, as did the resistance of the Roosevelt era.

The opposition grows, nevertheless, with every controversial decision. There have been few of these in the present term of the Court. For that reason, some are wondering whether Mr. Warren and his colleagues are, at least temporarily, in retreat.

When the tough decisions come, as they must, however, there are few indications now—so far as can be seen—that Mr. Warren and his Court may yield to their critics. The battle line seems to have been drawn. [END]

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Sen. Butler Seeks Bill to Reverse Four Disputed High Court Rulings

By Richard L. Lyons
Staff Reporter

Senator John Marshall Butler (R-Md.) yesterday suggested a different approach to the Jenner Bill's goal of undoing the effects of recent Supreme Court decisions in security cases.

Instead of stripping the Court of its power to review five types of security cases as Sen. William E. Jenner (R-Ind.) would do, Butler proposed a bill reversing four major decisions and taking away the Court's appellate jurisdiction in one area—state standards for admission of lawyers to practice.

Butler offered his proposal at a Senate Judiciary Committee meeting as amendments to Jenner's measure. No votes were taken. The Committee will consider the bill again next Monday.

Butler's amendments would reverse the effects of the Court's decisions in the Nelson, Cole, Watkins and Yates cases. Separate bills to reverse most of them have been filed in each house.

The Nelson case struck down 42 state antisubversive laws on grounds that Federal Government had preempted the Communist-hunting field with the Smith Act. Butler would reverse this and any other like case by stating that no Federal law shall exclude states from the same field unless Congress so specifies.

The Cole decision interpreted the intent of Congress as limiting the Federal security program to sensitive positions. Butler's amendment would extend it to every Government job.

The Watkins decision placed limits on the investigative power of Congress and said, among other things, that witnesses must be told how questions put to them are pertinent to the Committee's legislative purpose. Butler proposed language stating that any question is pertinent if the "body conducting the inquiry" says it is.

The Yates decision made Smith Act convictions more difficult by narrowly defining its terms. The Act makes it an offense to teach or advocate or organize any group which advocates overthrow of the Government by force. The Court said "organize" referred to the founding of the Communist Party and could not be applied to persons who later bring in new members. It distinguished between "advocacy and teaching" as an abstract principle and as an action effort.

Butler's amendment states that "organize" means a continuing operation of bringing in new members and that "advocacy and teaching" is a crime regardless of "tha immediate probable effect of such action."

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Butler's Unkindest Cut

Senator Butler's substitute for the Jenner bill to limit the jurisdiction of the Supreme Court is a significant admission that it will not even win favor of the extreme right wing in the Senate cannot stomach Mr. Jenner's outright assault on the judiciary. Senator Jenner had proposed that the Supreme Court be denied the right to review cases in five different fields. To that extent the Court could no longer function as the judicial arbiter of our constitutional system. The idea is so subversive that even Senator Butler moved to discard it, except in cases involving state regulations for the admission of lawyers to the bar.

This ought to dispose of the Jenner brainstorm. But what of Mr. Butler's own device for accomplishment of at least part of what the Indiana Senator sought? The Butler plan, except in the case of bar-admission cases, is to change the statutes which he insists the Supreme Court has misconstrued. There is nothing, of course, to prevent Congress from modifying any Federal statute if the Court has misconstrued the congressional intent. But each case of this sort ought to stand on its own merits or demerits, and in the Butler list the demerits greatly predominate. Certainly the idea of assembling a group of unrelated alleged grievances against the Supreme Court into a bill to take the place of a very different kind of measure is in itself a monstrosity.

In an effort to overrule the Court in the Steve Nelson case, Senator Butler would set up a sweeping new principle. In that case the Court invalidated Pennsylvania's "little Smith Act" on the ground that Congress had occupied the field of control over subversion against the United States. Senator Butler would provide that no act of Congress in any field would "operate to the exclusion of any state law on the same subject matter unless such act contains an express provision to that effect." The result would be to leave state legislation in effect unless it could not be reconciled with Federal law in the same sphere.

If Congress wishes exclusive control in a field in which Federal and state regulations have been traditionally intermingled, it would certainly be well advised to say so in very positive terms. We can see no objection to Congress saying by law that when it does not say so specifically, it does not intend to blanket out all state legislation in the field affected by its own act. But if such an act were passed it should obviously apply only to future legislation. To apply it to the past, as Senator Butler proposes to do, would have the effect of upsetting many delicate Federal-state relationships that are not even in controversy.

In short, there is no excuse for Mr. Butler's substitute, and it ought to be consigned to the ocean along with the original Jenner bill.

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(CRIMINALS)

THE HOUSE JUDICIARY COMMITTEE APPROVED A BILL TODAY TO LIMIT THE EFFECT OF A 1957 SUPREME COURT DECISION INVOLVING POLICE QUESTIONING OF FEDERAL CRIMINAL SUSPECTS.

THE COMMITTEE RECOMMENDED THE BILL DESPITE OBJECTIONS FROM CHAIRMAN EMANUEL CELLER (D-N.Y.) THAT IT IS "FAULTY" BECAUSE IT CONTAINS "NO LIMIT" ON THE TIME AN ARRESTED PERSON CAN BE HELD FOR QUESTIONING.

THE BILL STEMS FROM THE COURT'S RULING LAST JUNE FREEING AN ACCUSED WASHINGTON RAPIST, ANDREW MALLORY, ON GROUNDS THAT HE WAS HELD TOO LONG BEFORE HE WAS ARRAIGNED. THE COURT VOIDED HIS CONFESSION BECAUSE OF THE DELAY.

THE BILL STATES THAT CONFESSIONS SHALL NOT BE THROWN OUT SOLELY BECAUSE OF DELAY, IF THEY ARE OTHERWISE ADMISSIBLE AS EVIDENCE IN FEDERAL TRIALS. IT ALSO PROVIDES THAT CONFESSIONS WILL NOT BE ADMISSIBLE UNLESS POLICE INFORM A SUSPECT BEFORE QUESTIONING THAT HE IS NOT REQUIRED TO MAKE A STATEMENT AND THAT ANYTHING HE SAYS MAY BE USED AGAINST HIM.

THE BILL WAS DRAFTED BY A SPECIAL SUBCOMMITTEE, SET UP LAST YEAR TO STUDY SUPREME COURT DECISIONS IN A NUMBER OF FIELDS.

CELLER CALLED THE MEASURE "DANGEROUS" AND "AN INVITATION TO THE POLICE TO DELAY THE ARRAIGNMENT FOR ITS OWN PURPOSES."

"THE LONGER THE PERIOD BEFORE ARRAIGNMENT, THE MORE OPPORTUNITY IS GIVEN TO THE POLICE TO EXTRACT A CONFESSION BY MEANS LEGAL OR ILLEGAL," HE SAID IN A STATEMENT.

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WASHINGTON CITY NEWS SERVICE

Trial by Jury

It is sad, but true, that the Supreme Court's latest opinions on the right to a jury trial in criminal contempt cases were not available during last summer's debate on the civil rights bill. For some of the things said, especially by the dissenting justices, would have curled the hair of those "liberals" who opposed jury trials in civil rights cases.

The case before the court involved two Communists—Gilbert Green and Henry Winston. They were among the 11 Communist leaders convicted under the Smith Act. After their conviction had been upheld by the Supreme Court they jumped bail and went into hiding. When they surrendered five years later they were charged with criminal contempt for violating a lower court order, tried without jury and sentenced to serve three additional years. The majority opinion conceded the right of Congress to provide for jury trials in any or all criminal contempt prosecutions. But Congress had made no such provision in this type of case, and the majority upheld the conviction.

Justice Black, joined by Chief Justice Warren and Justice Douglas, wrote a powerful dissent. Justice Black said the facts of this case "provide a striking example of how the great procedural safeguards of the Bill of Rights are now easily evaded by the ever-ready and boundless expedients of a judicial decree and a summary (without jury) contempt proceeding." He contended that in *all* criminal contempt prosecutions, whether Congress has agreed or not, the accused is entitled by the Constitution to be tried by a jury after indictment by a grand jury. Then Justice Black added this:

> Summary trial of criminal contempt, as now practiced, allows a single functionary of the state, a judge, to lay down the law, to prosecute those whom he believes have violated his command (as interpreted by him), to sit in "judgment" on his own charges, and then within the broadest kind of bounds to punish as he sees fit. It seems inconsistent with the most rudimentary principles of our system of criminal justice, a system carefully developed and preserved throughout centuries to prevent oppressive enforcement of oppressive laws, to concentrate this much power in the hands of any officer of the state.

[redacted] principles which led the Senate to adopt an amendment guaranteeing jury trials in all criminal contempt actions arising under the civil rights law. It is an eloquent rebuke to those who, through political pressures in the House, forced adoption of a so-called compromise which limits jury trials to cases in which the penalty exceeds 45 days in jail or a $300 fine.

The argument in support of this phony compromise was that Southern juries could not be trusted to convict the guilty. But Justice Black scorned this argument. What will the "liberals" say now? Will they say that the dissenting justices are reactionary, or that they are not concerned with civil liberties? They will not say this if they will read the opinion. And we hope they will read it, for if they do it may clear their minds of some of the nonsense they were spouting last summer when the jury trial issue was up for debate.

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Laws Limiting High Court Hit

Senator Javits, Republican of New York, yesterday warned the Senate against legislation that would rob the Supreme Court of its legitimate powers.

He said he was glad to join Attorney General Rogers in opposing such measures as the Jenner bill to keep the Supreme Court from reviewing most security cases.

Mr. Rogers on Tuesday termed as "silly" an oath administered recently at a Senate hearing to a Federal judge nominee who swore he would uphold the oath he will be required to take later before ascending the bench. The Attorney General also said, the Justice Department is not yet convinced the legislation to modify the Supreme Court Mallory rule was a good idea.

A bill reported to the floor by the House Judiciary Committee would prevent a confession from being barred in court solely because of the time lapse between arrest and arraignment. The bill stemmed from the Mallory decision in which a confession was thrown out of court because of a delay before arraignment of 7½ hours, termed "unnecessary" by the Supreme Court.

Senator Javits said legislation opposed by the Justice Department threatened the balance of power between the judicial and legislative branches of Government.

"I feel it is necessary to speak up before some of these measures come to the Senate floor," Senator Javits said. "I want to record myself now. We ought to let the people know what is afoot."

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Man Without a Country

The complex division of the Supreme Court in the nationality cases decided last Monday leaves much to be desired. In the Trop case the Court ruled 5 to 4 that Congress overreached its power when it tried to deprive deserters from the military forces of their citizenship. Justices Black, Douglas and Whittaker joined in Chief Justice Warren's opinion; Justice Brennan concurred separately and Justices Black and Douglas added a brief opinion of their own. Justice Frankfurter wrote the dissent with the concurrence of Justices Burton, Clark and Harlan.

In the other major nationality case, involving Clemente Martinez Perez, Justice Frankfurter spoke for a bare majority of five, and there were three separate dissents. In this case the Court concluded that Congress had authority to deprive Perez of his citizenship because he voted in a Mexican election. However, the seeming contradiction between the two decisions is more apparent than real. Some vital distinctions can be drawn.

The Chief Justice made a powerful case against that section of the Nationality Act of 1940 which would strip a native-born American of his citizenship for desertion from the Army. "Citizenship," he pointed out, "is not a license that expires upon misbehavior." The Fourteenth Amendment confers national citizenship upon all native-born Americans. We do not think that basic "right to obtain rights" can be taken away as a punishment for crime. So drastic is this "total destruction of the individual's status in organized society," as the Chief Justice concluded, that it amounts to cruel and unusual punishment forbidden by the Eighth Amendment. Incidentally this decision completely undercuts President Eisenhower's suggestion in 1954 that Communists convicted under the Smith Act be stripped of their citizenship—a suggestion which Congress wisely ignored.

The Perez case turned on very different facts. Born in Texas, Perez had lived in Mexico 23 years before he returned to this country claiming to be a native-born Mexican. He shifted across the border several times as a workman. When he finally sought admittance to the United States as a citizen, he admitted that he had voted in Mexican political elections and that he had remained in Mexico to escape the United States military draft. The Court held that the power of Congress to regulate foreign affairs was ample to permit the nullification of the citizenship of one who votes in a foreign election.

Though Chief Justice Warren and his dissenting brethren vigorously assailed this conclusion, they admitted that the action of an expatriate "may be so inconsistent with the retention of citizenship as to result in loss of that status." This Nation of immigrants could scarcely insist that one's original nationality is maintained through any and all circumstances. It is not unreasonable for Congress to lay down rules for the forfeiture of citizenship by native-born Americans who have clearly transferred their allegiance to another country.

The weakness of the statute in this particular is that it appears to make loss of citizenship the price for any act of voting in a foreign election regardless of whether it may be reasonably construed as a sign of transferred allegiance. Aliens voted in our presidential elections in some states until 1928. Perhaps the chief conclusion to be drawn from these cases is that Congress ought to take a more careful look at its carelessly prepared statute of 1940 before the Court finds it necessary to whittle more of it away.

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Mallory Rule Advice Given

A transcript of the advice which United States Attorney Oliver Gasch and his staff gave to selected police officials on how to act under the restrictions of the Mallory rule will be distributed later this week to most other policemen who deal with this problem.

Chief of Police Robert V. Murray said yesterday that the transcript of the three lectures will be accompanied by a general order telling the force that these are the views of the United States Attorneys Office and that they should be followed.

Gasch was asked to talk to police in an effort to bring their investigative methods into line with requirements placed on them by the Supreme Court's interpretation of the judicial rules of criminal procedure.

~~Under~~ those rules, police must arraign those they arrest without unnecessary delay. In the Mallory case, the Supreme Court refused to allow into evidence a confession obtained during an "unnecessary delay."

In his lectures, which were largely prepared in answer to questions submitted in advance by police, Gasch tried to explain what an unnecessary delay is.

His interpretation has been that the normal processing from arrest to arraignment can be interrupted only by delays which are the results of factors beyond police control. Delays of this type, Gasch said, probably will not affect the validity of statements made by those who have been arrested.

The delays which Gasch considers necessary are those which might occur when a defendant is drunk, critically injured, or when a mechanical failure of police equipment, such as a flat tire, slows down the arraignment process.

Murray said yesterday that copies of the transcript will be distributed to all precinct officials and to all detectives on ~~the force~~.

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A SHARP DISAGREEMENT

The Mallory Decision:

Two Experts Give Their View

'Remedial Legislation Is Needed'

'It Protects Our Liberties'

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By OLIVER G[illegible]

On the 7th day of [illegible], 1954, Andrew Mallory, his face obscured by a handkerchief, assaulted and raped Mrs. X in the basement of the apartment in which she lived. She had gone there to use the washing machine provided for the tenants.

Mallory was arrested at 2:30 p.m. the following day. He denied the offense. Seven and one-half hours elapsed between his arrest and his oral confession. During the interim the police questioned others believed involved.

Mallory was questioned by the police for approximately two hours. The jury considered his confession free and voluntary. He never disputed this. The victim could not identify her assailant. Because of the delay between arrest and arraignment the following morning, Mallory's confession was ruled inadmissible. Without the confession, the Government lacked sufficient evidence to seek a conviction and Mallory was released.

The Mallory decision requires the exclusion from evidence of confessions made by persons under arrest unless there was compliance by the police with Rule 5(a) of the Federal Rules of Criminal Procedure, which requires arraignment of arrested persons "without unnecessary delay."

Prior to the Mallory case the law in the District on confessions permitted the jury to give to confessions such weight as it felt was merited, provided first the trial judge made a determination that there was evidence that such a confession was voluntary.

The Basic Test

Voluntariness is the test for admission or rejection of confessions in most of the States. Confessions shown to be voluntary are trustworthy. Under the old rule delay between arrest and arraignment did not necessarily vitiate a confession unless the delay was so protracted that it could be said the delay produced the confession, in which event the confession might be regarded as involuntary and inadmissible.

In four instances the court said the basis of its ruling was an interpretation of the intent of Congress in authorizing Rule 5 (a) of the Federal Rules of Criminal Procedure. It would therefore appear the decision rests in an area wherein Congress may legislate if it feels that remedial legislation is justified and in the public interest.

The most significant sentence in the Mallory decision, to me, is the sentence found at the bottom of page 4 of the Court's opinion:

> "The requirement of Rule 5 (a) is part of the procedure devised by Congress for safeguarding individual rights without hampering effective and intelligent law enforcement."

This sentence states the age-old problem with which civilized [illegible] have been concerned ever since the rights and dignity of the individual have been recognized.

Balance Is Vital

Balance must be achieved. The rights to be balanced are on the one hand those of the accused, and on the other those of our law-abiding citizens to be protected from criminal violence by the most effective law enforcement possible.

If too much emphasis is given to the efficiency of law enforcement, the rights of the accused may be impaired. Similarly, if we concern ourselves only with safeguarding the defendant's rights, we shall encourage and allow to go unpunished the criminal abuse of law-abiding citizens. Balance must be maintained if we are to have equal justice under law.

What rights are involved?

First, there are the rights of persons accused of crime. It is our duty and responsibility as law enforcement officers to be ever alert to protect the rights of the accused.

Second, it is at least equally important for us to consider the rights of the law-abiding citizens who rely upon us for protection from the criminal. Those who live and work and visit in the District of Columbia and who use the streets during the day and night have the right to effective and intelligent police protection. No one would contend that people here in the District are entitled to less effective police protection than persons living in New York, Memphis or Cincinnati.

Third, we should consider the rights of the innocent person who has been accused of crime. Assume that such a person has been arrested on probable cause but that the police in their own minds question the identification by the witness. Perhaps they are impressed by the individual's protestation of innocence. They should have an opportunity to check further into the case before stigmatizing the individual with a criminal charge and an arraignment.

Fourth, there is the pitiful situation of the innocent victim. Some of these innocent victims of rapes and yoke robberies are literally afraid to open the doors of their homes or apartments to a stranger. They are afraid to walk the streets alone. We should not forget these people in our concern with the rights of the accused.

Legislation Is Needed

Experience under the Mallory rule indicates to me the desirability of remedial legislation.

In most cases brought to our attention by the police there is ample evidence beside confession evidence. In some cases, however, the Mallory rule appears to hamper effective and intelligent law enforcement—murders, rapes, and yoke robberies.

[illegible] identification is sought; as many it is impossible. It must be recognized that while probable cause justifies an arrest, guilt beyond a reasonable doubt must be proved in a criminal case. Evidence to meet this ultimate burden of proof is often obtained by interrogation. At the grand jury level, some cases have been rejected because we felt the confession evidence on which we were forced to rely had been secured contrary to the teaching of the Mallory case.

Trial judges differ as to the interpretation to be given the Mallory decision. Some have given it a liberal interpretation. They have not regarded themselves as bound by what they consider dicta. Others equally experienced have given the case a strict interpretation and have rejected confessions made 30 minutes and 50 minutes after arrest, respectively. These cases involved brutal yoke robberies. Victims have difficulty understanding why such crimes go unpunished. Mr. Justice Cardozo's admonition should be recalled: ". . . Justice, though due the accused, is due the accuser also."

Three Important Reversals

On appeal, three important murder cases have been reversed because of the use of confessions secured contrary to the interpretation of the Mallory case.

- Watson, the confessed murderer of Miss Taggart in the Scotts Hotel, cannot be retried for this murder.
- Carter, the confessed murderer of a 14-year-old girl, cannot be retried because of the restrictions of this doctrine. His confession, completely voluntary and trustworthy, has never been repudiated by him. Orally he confessed about four hours after his arrest.
- Starr was convicted of the second degree murder of his wife. There was ample eyewitness testimony, but among other defenses Starr pleaded insanity. He had given the police a statement in which he denied stabbing his wife. The statement seemed to be trustworthy evidence of his capacity and understanding at the time of the incident in question. The reviewing court, however, reversed the conviction on the authority of the Mallory case because it felt that the introduction of such an exculpatory statement was prejudicial to Starr's defense of insanity.

A few days ago our Court of Appeals denied a motion to remand in the Milton Mallory case. This defendant is a nephew of Andrew Mallory and had been convicted of the charge of carnal knowledge of an 8-year-old girl.

The defense moved to remand the case for a new trial because of the delay between arrest and arraignment. The court's denial of this motion was predicated largely upon special and unusual facts. Milton Mallory was so intoxicated

A DEBA[TE]

The Supreme Court [illegible] Mallory case decision has h[ad a] profound effect on law enforcement in the District of Columbia since it was handed down last June. It also has provoked a storm of controversy, being attacked on the one hand as an infringement of the public's right to protection against criminals and hailed on the other hand as a defense of basic Constitutional rights.

The opposing views on the Mallory decision are presented here in articles written especially for The Star by Mr. Gasch, United States Attorney for the District of Columbia, and Mr. Williams, a leading Washington lawyer.

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at the time of arrest that arraignment before a commissioner or judge would have had no significance to him. When he was sober the following morning and when confronted with the charge against him, he admitted his guilt within five minutes.

Under these circumstances it does not appear that the Court of Appeals has changed or liberalized the Andrew Mallory doctrine.

Justice Calls for Action

We have had many conferences with the chief of police and his supervisory officials. We have met with the detective force on three occasions to lecture them on the principles of this decision and to answer as accurately as possible their questions. Certain practices formerly considered essential to efficient police work have been abandoned.

Legislation which requires warning the individual before questioning by the police but which would authorize the admission of confessions shown to be voluntary and trustworthy would be in the interests of justice. It would serve both to safeguard the rights of the accused and prevent the hampering of effective and intelligent law enforcement.

By EDWARD BENNETT WILLIAMS

One of the hottest legal controversies in recent years was touched off last year when the Supreme Court reversed Andrew Mallory's rape conviction. Most people are not sure whether the Mallory rule is bad law, but they have been repeatedly told that Mallory is a bad man and they are violently opposed to any rule which may block his conviction.

Mallory was a 19-year-old colored boy of limited intelligence who had been charged with a brutal and unwitnessed rape. He was arrested at 2 o'clock on the afternoon of April 8, 1954, and questioned by the police until he confessed to the crime some eight hours later. He was not taken before a United States Commissioner until the next morning. The Supreme Court reversed his conviction, holding that this confession could not be used against him because it had been obtained during an unlawful delay between arrest and arraignment.

The Mallory case was a unanimous decision by what I believe to be the greatest Supreme Court of our generation. It is significant that four of the Justices who joined in this opinion are former prosecutors.

It is also significant that the present Attorney General of the United States says that he is not at all convinced that the decision needs to be changed by legislation.

Based on Rule

Under the law no other decision was rationally possible. Rule 5 of the Federal Rules of Criminal Procedure provides that the police shall take an arrested person "without unnecessary delay before the nearest available commissioner" or other committing magistrate, who must inform the accused of the complaint against him, of his right to retain counsel, and of his right to a preliminary examination.

He must also inform the accused that he is not required to [make] a statement and that anything he says may be used against him. He must admit the accused to bail in all noncapital cases and in capital cases where the circumstances warrant it. Unless the accused waives a preliminary examination, the commissioner must hear the evidence against him within a reasonable time and discharge him unless it appears that there is probable cause to believe he has committed an offense.

Rule 5 is the law of the land. If a police officer flouts its requirements, he is flouting the law of the land. It has long been settled that Federal officers cannot use the fruits of their own wrongdoings to secure convictions. Evidence secured by physical coercion, unlawful search and seizure, and wiretapping is for this reason inadmissible in the Federal courts.

In the celebrated McNabb case, decided in 1943, the defendants were questioned for an inordinate length of time before they were taken before a commissioner and informed of their rights. The Supreme Court reversed their convictions on the ground that confessions secured during such unlawful detention could not be used against them. The Mallory rule, therefore, is nothing more than the application of a 15-year-old principle in a new case.

Faulty Logic

The principal argument advanced against the Mallory rule is actually the most cogent evidence of the necessity for it. The police and the prosecutors point out that the commissioner must release an arrested person unless there is "probable cause" to believe that he has committed a crime. They then urge that they are often unable to show "probable cause" until they have secured a confession.

This logic has one fatal flaw. Under Rule 4 of the Federal Rules of Criminal Procedure, a police officer cannot secure an arrest warrant unless there is "probable cause" to believe that the arrested person has committed a crime.

This requirement is dictated by the Fourth Amendment, which provides that an arrest warrant shall not issue except upon "probable cause." The same requirement of "probable cause" has always applied to arrests without a warrant. If an arrest is lawful under Rule 4 and the Fourth Amendment, therefore, there is already "probable cause" and no confession is necessary in order to hold the accused for action by the grand jury.

If, on the other hand, there is no "probable cause" at the time of the arrest, the accused should not have been arrested to begin with, and he should be promptly taken before a commissioner and released as the law requires.

THE RULE INVOLVED

The Mallory decision hinged on the application of Rule 5 (a) of the Federal Rules of Criminal Procedure. This is the rule:

5 (a) APPEARANCE BEFORE THE COMMISSIONER. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any nearby officer empowered to commit persons charged with offenses against the law of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

When the police insist upon an opportunity to question arrested persons in order to develop "probable cause," they are really asking for the right to arrest upon suspicion. They are asking for the right to arrest at large and interrogate at leisure. This is a practice which has been universally adopted by totalitarian states.

If the police want the right to make dragnet arrests they should ask for a constitutional amendment. As long as Rule 4 and the Fourth Amendment remain on the books, however, we should demand that our law enforcement officers obey them.

Bills Before Congress

Two bills are now pending before Congress to repeal the Mallory rule. H. R. 8600, which was introduced by Representative Keating of New York and which has been approved almost in its original form by the House Judiciary Committee, provides that no confession shall be inadmissible solely because of a delay in taking the defendant before a commissioner.

This bill is a license for lawless law enforcement. It leaves unchanged the plain commandment of Rule 5, but it invites the police to ignore this commandment whenever they need a confession to validate an invalid arrest.

Thirty years ago, Mr. Justice Brandeis penned the classic indictment of any system in which the police are above law. He wrote:

> "Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution."

Senator Butler of Maryland has introduced a bill which is almost as dangerous as the Keating bill. S. 2432 provides that the police must take the accused before a commissioner within 12 hours of his arrest, but if a commissioner cannot be found within that period the police may continue to hold the accused until arraignment is possible.

This bill invites the police to wait literally until the eleventh hour before making any effort to take the accused before a commissioner. It puts a premium, moreover, upon intensive interrogation to extract a confession before the deadline.

Under this bill the police could hold any suspect incommunicado for 12 hours of continuous questioning before anyone advised him of his right to counsel, his privilege against self-incrimination, his right to bail.

It has been suggested that these bills would protect innocent people from arrest records, because the police would release anyone who appeared innocent after interrogation. The fact is that a record must be kept of all arrests. Once a man is arrested and taken to police headquarters he has an arrest record. His reputation cannot be further damaged by taking him before a commissioner who will advise him of his rights and, in most cases, admit him to bail.

Would Discriminate

These bills will, however, discriminate against the youthful and uneducated suspect. The hardened criminal does not need a Commissioner to advise him of his rights—he knows them. It is no accident that the Mallory rule was formulated in a case involving a 19-year-old boy of limited intelligence.

Our Court of Appeals has reversed only three convictions on the basis of this rule. It is likewise no accident that one of these cases involved another 19-year-old defendant of questionable mental capacity and another involved an 18-year-old defendant with an I. Q. of 74.

These are the people whom Rule 5 was promulgated to protect. They do not understand about the privilege against self-incrimination. They do not know that the court will appoint a lawyer to defend them if they are without funds. They do not know about bail and preliminary examinations.

It is a crime to advise these people of their constitutional rights after the police have questioned them for hours or even days to extract damaging admissions which virtually insure conviction.

The McNabb case provoked the same crisis in 1943 that the Mallory case is provoking today. Bills were introduced in Congress to nullify its effects. For 15 years we have lived under the McNabb rule, however, and it has released few, if any, dangerous criminals to prey on society. The latest statistics from the Department of Justice show that 90 per cent of the criminal prosecutions initiated by the United States during 1956 and 1957 ended in convictions. It is a safe prediction that the Mallory rule will have no discernible effect upon these statistics.

Small Price

The occasional release of a guilty man, moreover, is a small price to pay for a society where the police are under the law. The business of ferreting out crime is often competitive, and the police are tempted to forget than an unsolved crime is not the worst of all possible evils.

A free society can survive the occasional acquittal of the guilty, but it cannot survive the conviction of the innocent. Nor can it survive dragnet arrests upon suspicion and subsequent detention for investigation.

Historically the real threats to civil liberties have not come from men of bad faith. We have always been alert to their designs. The great danger has lurked in insidious encroachments by well-meaning men of zeal, who have forgotten that a good end does not justify an illicit means. The Mallory decision is a great decision because it reasserts this elementary principle.

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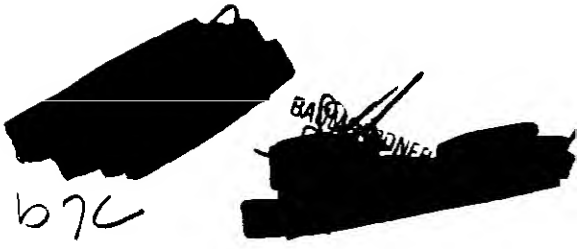
Miss Gandy



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WP18
(JUDICIARY)
SOME SENATE JUDICIARY COMMITTEE MEMBERS ARE PREPARING TODAY TO ASK SEARCHING QUESTIONS ABOUT THE APPEARANCE OF AN EXTENSIVE ATTACK ON THE SUPREME COURT AS PART OF RECENT "HEARINGS" BY THE SENATE INTERNAL SECURITY SUBCOMMITTEE.
THE SUBCOMMITTEE IS AN ARM OF THE JUDICIARY COMMITTEE. BOTH ARE HEADED BY SEN. JAMES O. EASTLAND (D-MISS.).
THE DOCUMENT IN QUESTION, DISTRIBUTED AS AN "APPENDIX" TO THE SUBCOMMITTEE'S RECENT HEARINGS ON THE JENNER BILL TO LIMIT THE SUPREME COURT'S JURISDICTION, IS A STUDY ENTITLED "THE SUPREME COURT AS AN INSTRUMENT OF GLOBAL CONQUEST" BY THE "SPX RESEARCH ASSOCIATES."
THE "RESEARCH" OUTFIT IS NOT OTHERWISE IDENTIFIED. NOR COULD QUESTIONING SENATORS FIND ANY REFERENCE TO IT IN THE SUBCOMMITTEE'S EXTENSIVE HEARINGS. A QUICK SEARCH OF THE HEARINGS DID NOT INDICATE THE POINT AT WHICH -- IF AT ALL -- THE "STUDY" WAS AUTHORIZED TO BE PRINTED OR BY WHOM.
WHAT ESPECIALLY RAISED SOME EYEBROWS WAS THE FIRST CONCLUSION OF THE "SPX RESEARCH ASSOCIATES." IT READS:
"IN THE PARALYTIC EFFECT OF ITS PRO-COMMUNIST DECISIONS, ON STATE AND FEDERAL AGENCIES OF INTERNAL SECURITY, THE UNITED STATES SUPREME COURT IS THE MOST POWERFUL, AND POTENTIALLY DETERMINATIVE, INSTRUMENT OF THE COMMUNIST GLOBAL CONQUEST BY PARALYSIS."
SEN. THOMAS C. HENNINGS JR. (D-MO.), CHAIRMAN OF THE JUDICIARY COMMITTEE'S CONSTITUTIONAL RIGHTS SUBCOMMITTEE, INSTRUCTED HIS STAFF TO LOOK INTO THE "STUDY" AND CIRCUMSTANCES OF ITS CIRCULATION AS AN OFFICIAL DOCUMENT.
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WASHINGTON CITY NEWS SERVICE

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High Court Overrules Holtzoff

The Supreme Court held unanimously yesterday that District Court Judge Alexander Holtzoff was wrong two years ago in refusing to let a man charged with a shooting change his plea from guilty to not guilty.

The defendant was Clarence B. Dandridge, who was sentenced to 3 to 9 years for shooting a man in the shoulder. Dandridge said the victim had beaten him up the night before and he was afraid he would again. After a courtroom conference with his court-appointed lawyer, Dandridge pleaded guilty. Five days later, but before sentence was imposed, he wrote Holtzoff asking that he be permitted to change his plea.

Dandridge wrote that he was "sick and not myself" during the court proceedings. He added that he had since identified witnesses who could help his case. Federal judges may permit a change of plea. Holtzoff said he saw no reason to do so, and refused.

The Justice Department told the Supreme Court that Dandridge had been hospitalized and might have been sick. They suggested that the case be sent back to Holtzoff to decide that question.

The High Court went further. It reversed the conviction and sent the case back to Holtzoff with directions to let Dandridge change his plea. This means the Government will have to go to trial and prove Dandridge guilty or let him go free.

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N. Y. Journal-American
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N. Y. Times
Daily Worker
The Worker
New Leader

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UP174

ADD 1 JUDICIARY (UP18)

KENNINGS SAID TODAY HE WAS "QUITE ASTONISHED" AT THE SENATE INTERNAL SECURITY SUBCOMMITTEE PRINTING OF AN EXTENSIVE ATTACK ON THE SUPREME COURT AS AN APPENDIX OF ITS RECENT HEARINGS ON THE SO-CALLED JENNER BILL.

THE MISSOURI DEMOCRAT SAID "IF IT WAS TO BE PRINTED AT ALL, IT SHOULD HAVE BEEN PLACED IN THE REGULAR VOLUME WITH OTHER STATEMENTS AND TESTIMONY SO THAT IT COULD BE EVALUATED ACCORDINGLY".

KENNINGS AND OTHERS HAD QUESTIONED PUBLICATION OF A STUDY ENTITLED "THE SUPREME COURT AS AN INSTRUMENT OF GLOBAL CONQUEST" BY THE "SPX RESEARCH ASSOCIATES." THE "RESEARCH" OUTFIT WAS NOT OTHERWISE IDENTIFIED.

SOME MEMBERS OF THE JUDICIARY COMMITTEE HAD QUESTIONED WHETHER THE SUBCOMMITTEE HAD OFFICIALLY AUTHORIZED PRINTING OF THE DOCUMENT.

KENNINGS, HOWEVER, SAID HE FOUND THAT PERMISSION TO INCLUDE THE "STUDY" IN THE HEARINGS WAS GIVEN AT A SUBCOMMITTEE MEETING FEB. 26.

THE MISSOURI SENATOR SAID HE COULD NOT AGREE WITH SUBCOMMITTEE COUNSEL J. G. SOURWINE'S DESCRIPTION OF THE "RESEARCH" DOCUMENT AS A "WORK OF SCHOLARSHIP." IT IS "ANYTHING BUT," KENNINGS SAID.

"I WAS QUITE ASTONISHED THAT THE SUBCOMMITTEE HIGHLIGHTED IT BY PRINTING IT SEPARATELY," KENNINGS SAID.

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WASHINGTON CITY NEWS SERVICE

Mr. Tolson

SP138

(RELEASE AT 6:30 P.M. EST)

(CASE)

NEWARK, N.J.--SEN. CLIFFORD P. CASE (R-N.J.) SAID TODAY THE PUBLICATION OF AN "ABSURD ATTACK" ON THE SUPREME COURT AS AN OFFICIAL SENATE DOCUMENT SHOULD BE "THOROUGHLY INVESTIGATED."

CASE URGED THE INQUIRY IN A SPEECH PREPARED FOR A LEGAL FRATERNITY DINNER HERE. HE REFERRED TO A PAMPHLET TITLED "THE SUPREME COURT AS AN INSTRUMENT OF COMMUNIST GLOBAL POLICY" WHICH WAS PUBLISHED AS A PART OF SENATE INTERNAL SECURITY SUBCOMMITTEE HEARINGS ON A BILL TO LIMIT THE HIGH COURT'S APPELLATE JURISDICTION IN CERTAIN CASES INVOLVING SECURITY AND SUBVERSION.

"I FULLY RESPECT THE RIGHT OF THOSE WHO BELIEVE THE COURT HAS ERRED TO POINT OUT THE ERROR AS THEY SEE IT AND TO SEEK REMEDIAL LEGISLATION WHERE SUCH IS APPROPRIATE," CASE SAID.

"BUT PERSONAL VILIFICATION AND ATTACKS UPON THE INTEGRITY OF THE COURT ARE QUITE ANOTHER THING. IT IS EQUALLY DISTURBING TO HAVE AN ABSURD ATTACK UPON THE COURT AS AN 'INSTRUMENT OF GLOBAL CONQUEST' BY COMMUNISM GIVEN THE DIGNITY OF SEPARATE PUBLICATION AS A SENATE DOCUMENT FOR THE USE OF COMMITTEE MEMBERS.

"HOW THIS HAPPENED SHOULD AND WILL, I TRUST, BE THROUGHLY INVESTIGATED BY THE JUDICIARY COMMITTEE."

THE PAMPHLET ON THE SUPREME COURT WAS PRINTED SEPARATELY FROM THE REST OF THE SUBCOMMITTEE'S HEARINGS ON A BILL BY SEN. WILLIAM E. JENNER (R-IND.). IT WAS SUPPLIED BY AN ORGANIZATION CALLED "SPX RESEARCH ASSOCIATES" AND WRITTEN BY THOMAS R. HUTTON OF EAST STANWOOD, WASH.

SEN. THOMAS C. HENNINGS JR. (D-MO.), A JUDICIARY COMMITTEE MEMBER, HAS OBJECTED TO THE SEPARATE PRINTING OF THE SPX DOCUMENT. HE SAID THE EXPLANATION THAT IT WAS RECEIVED TOO LATE FOR INCLUSION IN THE BULKY TRANSCRIPT OF THE JENNER BILL HEARINGS DID NOT HOLD WATER.

CASE ALSO ATTACKED THE JENNER BILL IN HIS SPEECH, SAYING MOST OF ITS SUPPORTERS "MAKE NO BONES ABOUT THE FACT THAT THEIR PURPOSE IS TO DEPRIVE THE COURT OF ITS TRADITIONAL JURISDICTION IN FIELDS WHERE THEY DO NOT LIKE CERTAIN DECISIONS THE COURT HAS MADE."

"WHATEVER WE MAY THINK OF A PARTICULAR DECISION, ITS RELATIVE POPULARITY OR UNPOPULARITY IS HARDLY A PROPER BASIS FOR MAKING SWEEPING CHANGES IN THE JURISLICTION OF THE COURT," HE SAID.

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Cheer, Cheer for Old Notre Dame

All is not punts and passes and touchdown runs at the University of Notre Dame.

The Notre Dame Law School sets out today to correct what its dean says are "honestly mistaken" views about the U. S. Supreme Court.

The occasion is a symposium on the role of the Supreme Court in the American constitutional system. Four constitutional experts are taking the day to outline their cases against the proposals offered by Sen. William E. Jenner (R-Ind.) to put limitations on the high court.

The discussions center on the current controversy stemming from the Court's 1954 school segregation rulings and last year's decisions involving FBI files, testimony before the House Un-American Activities Committee, Smith Act convictions and other major cases.

The Jenner bill was conceived in the midst of talk of impeachment of the court justices. It would prohibit the Court from reviewing cases arising in five legal areas, including certain issues in security, subversive cases and the powers and functions of congressional investigating committees.

Notre Dame is "throwing a hard block" against this anti-court climate, enabling the high court to "run with the ball."

As Dean Joseph O'Meara expresses it:

"We don't want to stop criticism of any specific Court decision, but we believe the Court's right to make the decision should not be impaired. Argue the umpire's ruling if you will, but don't change the rules of the game.

"Accusations and clamorous demands are calculated to weaken public confidence in the Court and thus diminish its influence as a symbol and spokesman of the rule of law in an increasingly lawless world.

"Our discussions are beamed at people who are honestly mistaken about these matters."

Presiding over the symposium is David Maxwell, of Philadelphia, immediate past president of the American Bar Association. The ABA's policy-making House of Delegates is on record against the Jenner bill.

Let's hope with Dean O'Meara that the significance of the Notre Dame meeting will carry beyond academic circles—at least to Washington. For the message is obviously aimed at Congress.

And "cheer, cheer for Old Notre Dame" for becoming vocal about the attack on the Court. The bar in general has been much too silent.

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UP126

(SUPREME COURT)

SEN. JOHN MARSHALL BUTLER (R-MD.) SAID TODAY "AN OVERWHELMING MAJORITY" OF AMERICANS WANT CONGRESS TO UNDO RECENT SUPREME COURT DECISIONS ON INTERNAL SECURITY CASES.

BUTLER DEFENDED IN A SENATE SPEECH A BILL HE IS SPONSORING THAT WOULD CHANGE FOUR RECENT DECISIONS CRITICS OF THE SUPREME COURT CLAIM HAVE WATERED DOWN EFFORTS TO CONTROL COMMUNISM AND OTHER SUBVERSIVE ACTIVITIES.

SEN. THOMAS C. HENNINGS JR. (D-MO.) CRITICIZED THE BUTLER MEASURE LAST WEEK FOR CONTAINING "DANGEROUS SLEEPERS" AND SEVERAL PROVISIONS UNRELATED TO EITHER THE SUPREME COURT OR EACH OTHER.

BUTLER REPLIED THAT HIS PROPOSAL, AN AMENDMENT TO AN EARLIER BILL BY SEN. WILLIAM E. JENNER (R-IND.) DEALS WITH INTERNAL SECURITY LEGISLATION TO WHICH THE HIGH COURT GAVE AN INTERPRETATION "NOT INTENDED BY THE CONGRESS." HOWEVER, BUTLER SAID, JENNER'S BILL "GOES TOO FAR," WHILE HIS OWN PROPOSAL USES "THE SCALPEL APPROACH."

THE MARYLAND SENATOR'S BILL BANS THE SUPREME COURT FROM RULING ON ADMISSIONS TO PRACTICE IN STATE LAW COURTS; SANCTIONS ANY QUESTION ASKED OF A WITNESS BEFORE A CONGRESSIONAL COMMITTEE IF THE COMMITTEE RULES IT IN ORDER; EXTENDS THE FEDERAL EMPLOYE SECURITY PROGRAM TO ALL AGENCIES, RATHER THAN JUST "SENSITIVE" JOBS; ESTABLISHES STATES' RIGHTS TO PASS LAWS IN FIELDS ALREADY COVERED BY FEDERAL LAW, SUCH AS SUBVERSIVE ACTIVITIES; AND OUTLAWS ALL ACTIVITIES AIMED AT THE OVERTHROW OF THE GOVERNMENT.

BUTLER SAID PASSAGE OF HIS BILL WOULD BE THE BEST WAY TO "CALL THE ATTENTION OF THE SUPREME COURT TO THE FACT THAT IT HAS OVERSTEPPED ITS PROPER AUTHORITY."

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WASHINGTON CITY NEWS SERVICE

0-19 (Rev. 10-29-57)

Court Rules Out Pre-Arraignment Self Crimination

By James Clayton
Staff Reporter

Nine judges of the United States Court of Appeals here split at least three ways yesterday on what the Supreme Court meant in its Mallory decision last summer. But, for all practical purposes, the division is interpreted to mean that confessions are inadmissible in criminal trials if they are obtained by police through questioning designed to elicit incriminating evidence.

Only two of the judges, John A. Danaher and Warren E. Burger, accepted that interpretation of the Mallory case.

Three others, E. Barrett Prettyman, Wilbur K. Miller, and Walter M. Bastian, said it is too tight a restriction on the police. What should count, they said, is the character of the questioning, not its purpose.

Judges David L. Bazelon and Henry W. Edgerton said it is too loose an interpretation. They were joined in their disposition of the particular case in question by Judges Charles Fahy and George T. Washington, who chose not to say what Mallory means.

Danaher's Stand Prevails

The result, apparently, is to make the Danaher position determinative of future cases until clarification comes from the Court of Appeals or the Supreme Court.

In the Mallory case, the Supreme Court said that a confession obtained during an "unnecessary delay" between arrest and arraignment is not to be used as evidence in a criminal trial.

The three interpretations of this rule announced yesterday are:

• Judge Danaher: "It is not simply a matter of hours, one way or another, but of police purpose and conduct in the light of circumstances . . . An accused is not to be taken to police headquarters for the purpose of extracting damaging statements . . . If he is, any confession is inadmissible.

• Judge Bazelon: "To me, this (rule) means that confessions obtained by questioning an arrested person before thus arraigning him are not admissible in evidence."

• Judge Prettyman: "A delay is to be judged unnecessary-or-not upon a realistic appraisal by the court of the circumstances of the delay." A suspect may be questioned "so long as the period of detention and the mode of the questioning are reasonable . . ."

Robbery Convictions

The case before them involved the three robbery convictions of John E. Trilling. Danaher and Burger joined with Bazelon, Edgerton, Fahy, and Washington in reversing two of them but with the other three judges in affirming the third.

Trilling confessed to one robbery at about 8:20 a. m. on Sept. 1, 1955, after a short period of questioning. It was this confession which was held admissible.

He was then questioned off and on all day while police sought ties to a murder case and many other robberies. He confessed to eight robberies in that interval and was taken before a judge for arraignment at about 3 p. m. Convictions which resulted from two of those confessions were reversed.

Danaher said the first confession did not result from a "process of inquiry." It was more in the form of a prompt acknowledgment by Trilling of his guilt when he was confronted by fingerprint evidence, and therefore was admissible.

The other two confessions, he explained, were clearly the result of questioning designed to produce incriminating evidence. Thus, under his interpretation, they were inadmissible.

Element of Compulsion

The first confession, Bazelon said, did not come spontaneously but only after considerable questioning. Any questioning prior to arraignment, he said, is wrong because police cannot arrest merely to question. They arrest only to bring defendants to court.

The real utility of questioning before arraignment, he charged, is in the element of compulsion which an arrested person feels under police scrutiny.

"The argument for permitting the use of confessions obtained by questioning before arraignment . . . comes to this: that society's interest in convicting the guilty justifies the use of a degree of compulsion against the guilty and the innocent alike," he argued.

Prettyman contended that none of the questioning of Trilling was done in a coercive manner. The procedure, he said, was "proper and commendable."

In the Mallory case, he explained, the Supreme Court sought to convey an idea of "inquisitorial injustice." "The character of the questioning is a key factor," he said.

A suspect may be questioned, he said, "in a manner and for a period reasonable for the purpose of obtaining information." Police cannot question so as to extract a confession, he added.

At that point, Prettyman disagreed with Danaher. Danaher held that the purpose of the questioning is the key, Prettyman that the character is decisive.

"The outlawing of the conduct of the police in this case," Prettyman concluded, "will unjustifiably and materially impede the enforcement of the criminal law in this jurisdiction."

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N. Y. Times
Daily Worker
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Legality Issues Cited In Butler Bill on Courts

The Butler bill to nullify the effects of four Supreme Court decisions in the field of subversion would pose serious constitutional questions in the opinion of the Department of Justice.

A letter from Deputy Attorney General Walsh to Senator Wiley, Republican of Wisconsin, a member of the Judiciary Committee, set forth specific objections to the proposed measure of Senator Butler, Republican of Maryland.

One provision of the bill would specify that any question asked a witness before a congressional committee is "pertinent" as long as the body conducting the hearing rules that it is.

Of this Mr. Walsh said that to withdraw the issue of pertinency from court consideration presents a constitutional question and is not a matter to be dealt with in an all-embracing bill.

Upsets Doctrine

Another provision of the bill would allow the States to legislate in the same fields in which there already is Federal legislation. This would upset the doctrine of pre-emption which holds that the fields in which the Federal Government has passed laws are exempt from State laws.

In opposing the Butler view here, Mr. Walsh said "the extent of the havoc this proposal would cause . . . may be gauged by its effect on interstate railroads which are now protected from inconsistent statutes by compliance with Federal statutes. . . ." He pointed out that farmers and marketers of agricultural products, now, by complying with "the Pure Food and Drug Act, are saved from prosecution under numerous State laws which set up different and varying standards for compliance."

Right to Fire Employes

Another facet of the bill would give all Federal department and agency heads the right to discharge employes under the security program, regardless whether their jobs were sensitive or non-sensitive in a security sense.

Mr. Walsh suggested that any action on such a proposition be held up pending completion of a report by the President's Commission on Government Security and the taking of a stand by the executive branch.

The Butler bill would, in contravention of the Supreme Court, make it a crime under the Smith Act to advocate, even abstractly, the violent overthrow of the Government, without any proof of actual incitement to action needed.

Needs Careful Study

"Improvement of the present (Smith Act) statute may be possible, but any amendment would require most careful study and should not be immersed in an omnibus rejoinder to recent court action in diverse fields," Mr. Walsh declared.

Opposition also was voiced in the letter to another provision of the bill which would deprive the Supreme Court of power to review State actions in barring persons from practicing law within the State.

The letter, mailed Thursday, was in answer to a request from Senator Wiley asking the views of the Justice Department on the Butler proposals.

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Help! Help!

A Solomon would stagger away, talking to himself and shaking his head, if called upon to explain what the Mallory rule means in the Nation's Capital today.

It has been almost a year since the Supreme Court handed down its unanimous decision in the Mallory case—a ruling which threw out the confession of a convicted rapist and resulted in his release. Mallory had been held by the police for 7½ hours. The reason for the reversal was that he had not been arraigned "without unnecessary delay" as required by Federal Rule 5 (a).

We thought from the beginning that the Supreme Court's decision was unreasonable in the circumstances of the Mallory case and that its meaning was unclear. Others disagreed, contending that the opinion was both proper and its meaning clear.

Now, almost a year later, comes the opinion of the United States Court of Appeals in the case of John Trilling, an eager-beaver safecracker. This appellate court is composed of nine able and conscientious judges. Yet they are in hopeless disagreement with respect to the meaning of the Mallory rule as applied to the Trilling case.

The division among the judges is cited here, not in any needling spirit, but to illustrate the massive confusion which prevails. Judge Danaher wrote what becomes the opinion of the court, affirming Trilling's conviction on one count in three indictments. Trilling, in three trials, had been found guilty under all of the indictments. Judge Danaher was joined in full only by Judge Burger, and we will return to Judge Burger later. Judge Bazelon, joined by Chief Judge Edgerton, would have thrown out all confessions and reversed the one conviction. Judges Washington and Fahy came to this same conclusion, but, perhaps significantly, they did not join in Judge Bazelon's free-wheeling opinion. Judge Prettyman was joined by Judges Miller and Bastian. He agreed with Judge Danaher as to the correctness of the one conviction, thus supplying a majority of the court on this point. But Judges Prettyman, Miller and Bastian thought that all of the confessions were valid and that all of the convictions should have been affirmed.

This, then, is the prevailing state of the law in the District with respect to the Mallory ruling. How can any policeman, prosecutor or trial judge be expected to know which end is up?

Let's get back to Judge Burger. In a brief statement he said he agreed reluctantly with Judge Danaher because he thought he was "compelled" to do so by the Mallory ruling. He would have preferred to join Judge Prettyman because what he said "makes sense and ought to be the law." Then Judge Burger said this: "Rule 5 (a) should be reexamined by the rule-making process or by Congress."

To this we say "Amen!" although we believe action by Congress is preferable. This community, in which the Mallory rule hits with full and crippling impact, is in desperate need of help. That help can best come through enactment of pending legislation which provides that mere delay in arraignment shall not serve to invalidate voluntary confessions. We earnestly hope the decision in the Trilling case will furnish the extra push needed to get the bill through Congress.

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Mr. Tolson
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Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
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Mr. Trotter
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Miss Gandy

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WP101

(COURT)

THE SENATE JUDICIARY COMMITTEE TODAY APPROVED TWO SECTIONS AND REJECTED ONE PORTION OF A BILL TO REDUCE THE SUPREME COURT'S DECISION AND REVERSE SOME OF ITS DECISIONS.

THE COMMITTEE BEGAN WORK ON A BILL BY SEN. WILLIAM E. JENNER (R-IND.) AND AMENDMENTS TO IT BY SEN. JOHN MARSHALL BUTLER (R-MD.).

APPROVED, 9-6, WERE SECTIONS:

1. BARRING THE SUPREME COURT FROM RULING ON ANY CASE INVOLVING THE ADMISSION TO PRACTICE LAW IN STATE COURTS.

2. DECLARING ANY QUESTION ASKED OF A WITNESS BEFORE A CONGRESSIONAL COMMITTEE PERTINENT UNLESS THE QUESTION IS THROWN OUT BY THE CHAIRMAN OF THE COMMITTEE ITSELF AT THE WITNESS' REQUEST.

REJECTED ON A 95-5 VOTE WAS A PROVISION THAT WOULD HAVE EXTENDED THE FEDERAL EMPLOYE SECURITY PROGRAM TO ALL GOVERNMENT AGENCIES INSTEAD OF THE SO-CALLED "SENSITIVE" JOBS IN SUCH DEPARTMENTS AS DEFENSE AND STATE.

THE COMMITTEE VOTING WAS ON BUTLER'S AMENDMENTS TO JENNER'S ORIGINAL BILL. HOWEVER, THE ADMISSIONS TO THE BAR SECTION WERE THE SAME IN BOTH VERSIONS.

THE OTHER TWO VERSIONS DIFFERED IN THAT JENNER'S BILL WOULD HAVE FLATLY PROHIBITED THE SUPREME COURT FROM RULING ON ANY CASES IN THE CONGRESSIONAL INVESTIGATION AND FEDERAL EMPLOYE SECURITY FIELDS.

THE EFFEECT OF BUTLER'S AMENDMENTS WOULD BE TO REWRITE THE LAW IN EACH FIELD TO MEET OBJECTIONS VITED IN RECENT HIGH COURT CASES.

CONGRESSIONAL CRITICS HAVE CLAIMED THAT THE COURT'S DECISIONS WATERED DOWN INTERNAL SECURITY LAWS FAR BEYOND THE LAWMAKERS' INTENT.

SEN. JAMES O. EASTLAND (D-MISS.), THE CHAIRMAN, SAID THE COMMITTEE WOULD WORK ON THE LAST TWO SECTIONS OF THE JENNER-BUTLER MEASURES AT ITS NEXT MEETING. HE SAID A REQUEST WAS MADE TO MEET ON THEM THIS WEEK, BUT HE FOUND IT HARD TO HOLD MEETINGS ANY DAY BUT MONDAY.

WHEN THE COMMITTEE MEETS AGAIN, IT WILL TAKE UP BUTLER'S PROPOSALS TO ALLOW STATES TO PASS LAWS IN FIELDS CONGRESS ALREADY HAS ENTERED -- SUCH AS INTERNAL SECURITY -- AND TO MAKE ANY ATTEMPTS TO TEACH THE OVERTHROW OF THE GOVERNMENT ILLEGAL, WHETHER THEY CONSTITUTE A "CLEAR AND PRESENT DANGER" TO THE GOVERNMENT OR NOT.

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WASHINGTON CITY NEWS SERVICE

George Spelvin, American:

Please Don't Point At Ghost Writers

(Here is another autobiographical chapter in the life of "George Spelvin, American," as reported by Westbrook Pegler.)

By WESTBROOK PEGLER

THERE IS a new kid on our block, the teacher sent the little bum home for cheating, it was a composition about Wyatt Earp, the kid copied a write-up out of the TV section and the teacher recognized it so she sent him home with a note.

Well, so Dreamie is always taking up with strange kids, especially boys, cake and ginger ale and stuff, so this character dropped by for his usual handout, and the little bum brain-washed her. She doesn't know right from wrong, oh the pity of it, and now neither do I, either.

PEGLER

She said what do you know about that? I said what? So she told me about this composition, she said the darn dope of a teacher is living in the past, if you want to succeed these days you have to adopt modern ways. I said like cheating? She said well, do you call it cheating for President Eisenhower to get up and spiel a recitation about inflation or the Whatnick, pretending like he wrote it his own self? When everybody knows they have a special department, about 15 characters on the payroll down there. They call it ghostwriting, the department is called the haunted house.

I told her honesty may be old-fashioned but if it is living in the past, I do not wish to hear any more brain-washed comments out of you, that kid sounds like his old man might be a Soviet agent.

I tried to argue, I said after all, President Eisenhower is a grown up man, this kid is nothing but a little punk. Dreamie said I told him that but he said what has size got to do with it? Can I cheat when I get grown-up?

I said let me think this over a little while. I want to sit still and figure out this proposition. So I thought about those big write-ups, where I read that those Supreme Court judges just sit up there and look like nine wise guys and then they go back and take a shower and some young squirt from Harvard comes in with a note book.

I was never so surprised in all my days. We pay those loafers more than they ever got before and they only work eight or nine months, no deductions for days absent, don't dock them for punk decisions.

Dreamie said I do not figure this is anything so very new. She said my Pop used to tell me all about Babe Ruth and Jack Dempsey, they were his idols and for years he couldn't hardly wait to read what they wrote how the Babe hit a fast ball inside, or Dempsey gave Tunney the old one-two.

But long afterward Pop learned the Babe and Jack did not write those articles at all, but some skinny old guy couldn't hit the floor with a flatiron would tell how he hit a wonderful home run and my Pop would eat it up.

Dreamie said it seems like they did all right. Babe Ruth is still Pop's hero and people wave at Dempsey wherever he goes.

I said I heard Wyatt Earp was a wrongo, I heard he shot some of the vigilantes and told the public they stuck up the coach.

Dreamie said, I don't care if he did.

There is one character I know would never do anything dirty, absolutely wouldn't ever cheat, and I am sitting on his lap and smack, smack, smack lipstick all over his face.

Mr. Pegler's next column appears here Friday.

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U.S. Supreme Court

UP51

(COURTS)

ATTORNEY GENERAL ROGERS SAID TODAY HE IS CONFIDENT THE COURTS WOULD COME THROUGH THE CURRENT "KILL THE UMPIRE" PERIOD UNSCATHED.

ROGERS OBVIOUSLY WAS REFERRING TO PROPOSALS APPROVED BY THE SENATE JUDICIARY COMMITTEE YESTERDAY WHICH WOULD CURB THE POWERS OF THE SUPREME COURT AND UNDO ITS RULINGS RELATING TO SUBVERSIVE ACTIVITIES.

"THERE HAVE BEEN MANY PERIODS IN OUR HISTORY WHEN THE 'KILL THE UMPIRE' ATTITUDE MADE CONSIDERABLE HEADWAY AND MANY POP BOTTLES HAVE BEEN THROWN AT OUR COURTS IN THE PAST," ROGERS SAID.

FORTUNATELY, HE ADDED, EXCEPT IN MINOR WAYS, "THE LEGISLATURE HAS NEVER TAKEN THESE ATTACKS SERIOUSLY ENOUGH TO ALTER THE JUDICIAL SYSTEM OR RETALIATE AGAINST THE JUDICIARY, AND OUR COURTS HAVE COME TO HAVE THE RESPECT AND FULL CONFIDENCE OF THE AMERICAN PEOPLE."

THE ATTORNEY GENERAL MADE THE REMARKS IN A BRIEF PREPARED SPEECH BEFORE THE SUPREME COURT JUSTICES AND OTHER JUDGES WHO ASSEMBLED HERE TODAY FOR A LAW DAY PROGRAM.

ROGERS SAID MANY OF THE SIGNIFICANT COURT DECISIONS--DECISIONS WHICH TODAY ARE REGARDED AS THE WISEST AND MOST PROFOUND--WERE "UNPOPULAR AT THE TIME THEY WERE MADE."

BUT ANY "FAIR-MINDED PERSON" WHO STUDIES THE HISTORY OF HIS COUNTRY, HE SAID, "WILL REALIZE THE FUNDAMENTAL AND INDISPENSABLE CONTRIBUTION" THAT THE COURTS HAVE MADE TO THE COUNTRY'S PROGRESS.

THE CABINET OFFICER SAID PUBLIC SUPPORT OVER THE YEARS HAS GIVEN THE JUDICIAL SYSTEM "THE INDEPENDENCE" WHICH IT MUST HAVE TO BE IMPARTIAL AND FAIR.

"ALL AMERICANS MUST KEEP IN MIND THAT OUR CONSTITUTIONAL SAFEGUARDS WOULD HAVE LITTLE LASTING VALUE IN THE HANDS OF A SUBSERVIENT OR TIMOROUS JUDICIARY," HE DECLARED.

ROGERS WENT ON TO SAY THAT HE HOPED TO RE-EMPHASIZE THAT THE "RULE OF LAW IS NOT ONLY VITAL TO FREEDOM BUT IN THE LONG RUN IT IS THE HOPE OF MANKIND FOR A PEACEFUL FUTURE."

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WASHINGTON CITY NEWS SERVICE

DAVID LAWRENCE

Invisible High Court 'Umpires'

Method of Choosing Justices' Clerks, Their Fitness and Power Questioned

Attorney General William P. Rogers has his baseball metaphors mixed up. He says the bills being considered in Congress to curb the excesses of the Supreme Court are the result of the same sort of outcry heard from spectators at a baseball game who shout, "kill the umpire!"

But what the critics of the Supreme Court really want is for the "umpire" to stick to his job of watching the ball and abiding by the rules. They don't think it's the umpire's duty to make new rules or to tell the manager of the club, for instance, just when he can put in a different pitcher. They don't like to see an umpire deciding that, when a ball drops outside the foul line, it is a foul for one team but, when the other team hits the ball into exactly the same spot, it isn't a foul at all. In other words, the fans don't want to see the umpire moving the foul line around to suit himself.

That's essentially what the dispute is about as the Supreme Court ignores the rules of the game repeatedly and makes up its own rules that are then proclaimed as binding on everybody—even to the point of telling Congress what questions may be asked in formal hearings through which its committes seek to get information to guide them in writing new laws.

Also, in a baseball game, everybody knows who the umpire is. He appears in full uniform and he has a rule book to go by. In the Supreme Court's work, it isn't always possible to know who the umpire happens to be.

Thus every justice has two law clerks, and the Chief Justice has four. These assistants don't have to be confirmed by the Senate. They are not supposed to be judges. Yet they perform some of the work of the Supreme Court justices, especially in connection with what are known as "writs of certiorari." These are petitions to the Supreme Court to grant an appeal from the lower courts. If the writ is denied, there's no appeal. It means a final judicial decision so far as the citizen is concerned. The Justice himself signs the denial of the writ, but the basic judgment which has preceded it often comes from a young law clerk imbued with all sorts of ideas as to the role of the Supreme Court in the Nation today.

Just a week ago, the New York Times, in its Sunday magazine, had an article by a former law clerk to a Supreme Court Justice who discussed very frankly the role played by the law clerks, many of whom come from the law schools imbued with the viewpoint of the so-called "intellectuals." The article said:

"Law clerks, then, generally assist their respective justices in searching the law books and other sources for material relevant to the decision of cases before the court. . . .

"The clerks often present the fruits of their searches to their Justices along with their recommendations. They go over drafts of opinions and may suggest changes. They tend to see a lot of their justices, and talk a great deal with them. And the talk is mostly about law and cases. . . .

"What is more important, the way to the Justice's mind was always open. There was always someone—fresh from the immersion in ideas that marks a law-school and law-review career—poised at the Justice's elbow, willing and able to do intellectual combat."

In baseball, anybody making decisions on the field of play must appear in uniform as an umpire and has to be seen. There are no invisible umpires.

Certainly when a lawyer has argued his case and submitted it to the Supreme Court Justices, he ought to have a right of rebuttal against any new points raised by "law clerks," especially some of those remarkable "footnotes" in Supreme Court opinions which have introduced new material of a controversial nature never brought up when the case itself was argued.

Another former law clerk to a Supreme Court Justice, writing last December in United States News & World Report, said:

"After conceding a wide diversity of opinion among the clerks themselves, and further conceding the difficulties and possible inaccuracies inherent in political cataloguing of people, it is nonetheless fair to say that the political cast of the clerks as a group was to the 'left' of either the Nation or the court.

"Some of the tenets of the 'liberal' point of view which commanded the sympathy of a majority of the clerks I knew were: Extreme solicitude for the claims of Communists and other criminal defendants, expansion of Federal power at the expense of State power, great sympathy toward any Government regulation of business—in short, the political philosophy now espoused by the court under Chief Justice Earl Warren."

Surely the Senate of the United States ought to examine the whole law-clerk system to determine whether perhaps these "clerks" should be given "umpire status," or at least classified as "assistant justices." Perhaps, instead of letting them change from year to year, Congress should provide permanent assistants to the Justices and require that among their qualifications should be actual experience on the bench in trial courts. For if the "law clerks" play such a vital part in the making of the "supreme law of the land," something more ought to be known by the Senate Judiciary Committee as to the method of their selection and the limits of their "judicial" activities.

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N. Y. Herald Tribune
N. Y. Journal-American
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Daily Worker
The Worker
New Leader

Date MAY 5 1958

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Today in National Affairs

Congress Urged to Check On Supreme Court Clerks

By DAVID LAWRENCE

WASHINGTON, May 4.—Attorney General William P. Rogers had his baseball metaphors mixed up. He says the bills being considered in Congress to curb the excesses of the Supreme Court are the result of the same sort of outcry heard from spectators at a baseball game who shout, "Kill the umpire!"

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Lawrence

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MAY 19 1958

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Mr. Tolson
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FBI Boss Hits Reds Release By High Court

Those who have been following the story "Masters of Deceit," by J. Edgar Hoover, director of the Federal Bureau of Investigation, are not surprised at the dupicity and trickery that can be worked by communists who are dedicated to their cause.

And one of the best means of helping the Communists in their work is for gullible peopla to do their work for them under another name.

Thus, it will come as no surprise to Lima News readers taht Hoover has put the cards squarely on the table in a release of testimony given before the House Appropriations Subcommittee in commenting on recent decisions of the Supreme Court that have freed 49 Communist party leaders. And, as Hoover told the committee:

"The courts must eventually come to grips in a realistic manner with facts and join all forces for good in protecting society."

Hoover also criticized the release of "vicious hoodlums and criminals" because of technicalities in legal procedure. He warned against "an unfortunate trend of judicial decisions which strain and stretch to give the guilty not the same protection but vastly more protection than the law abiding citizen."

He then added that "Crime and subversion have become critical challenges due to the mounting success of criminal and subversive elements in employing leopholes, technicalities and delays in the law to defeat the interests of justice."

THE LIMA NEWS
Lima, Ohio
May 6, 1958
Editor, Frank H. Cooey

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He then cited the record. Since 1949, he told the committee members, federal grand juries have returned guilty verdicts against 108 Communist party leaders under the conspiracy and membership provisions of the Smith act which forbids the teaching and advocacy of the overthrow of the government by force and violence.

But of these 108, he said, 49 of the Communists have been set free to continue their efforts for the party as the result of Supreme Court decisions. He told the committee:

"A top Communist functionary, while discussing the Supreme Court decision of June 17, 1957, which ordered the acquittal of five California Smith act subjects and the retrial of the remaining nine, said that 'this was the greatest victory the Communist party has ever received in America'."

"This decision will mark a rejuvenation of the CP in America," the top Commie told Hoover. "We've lost some members in the last few years but now we're on our way again."

Hoover quoted Justice John C. Bell Jr., of the Pennsylvania Supreme court, in a recent dissenting opinion, as expressing "common sense realism" when he wrote:

"The brutal crime wave which is sweeping and appalling our country can be halted only if the courts stop coddling and stop freeing murderers, Communists, and criminals on technicalities made of straw."

Hoover did not comment directly on legislation reported last week by the Senate judiciary committee which is designed to overcome the effects of Supreme court decisions in anti-communist cases. He said the judiciary must remain independent and never become "a mere rubber stamp for other branches of the government."

But he quoted approvingly an opinion by the late Supreme Court Justice Cardozo that "justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed down to a filament."

Hoover said the communist conspiracy in the United States, despite a reduction in party membership, continues at full strength in its "vicious, behind the scenes operations." Those who have resigned from the Communists party, he said, remain Marxists who are still willing to cooperate when needed.

The danger of communist fronts, organizations under secret communist leadership which enlist well meaning citizens, is now greater than ever before, he declared.

"We have approximately 150 known or suspected communist-front and communist infiltrated organizations under investigation," he testified.

The influence of the communist conspiracy reaches in to every walk of life. To gage its effect, we need only to note the widespread clamor which is raised whenever our government attempts to deal firmly in self-defense against the communist threat.

"Certain organizations hypocritically bar Communists from their membership, but they seek to discredit all persons who abhor Communists and communism. They claim to be anti-communist but they launch attacks against congressional legislation designed to curb communism."

"Sadly, the cult of the pseudo liberal, which is anything but liberal, continues to float about in the pink-tinted atmosphere of patriotic irresponsibility; and remains strangely silent when another nation such as Hungary is pillaged, plundered, and reduced to virtual serfdom by barbaric communism.

"Every pseudo liberal in this country should look inside his heart and give heed to the destruction he may be bringing upon the very country that permits him to enjoy this very freedom of thought."

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Supreme Court

UP105

(COURT)

SEN. JOHN C. STENNIS (D-MISS.) SAID TODAY THAT THE LAW CLERKS FOR U.S. SUPREME COURT JUSTICES SHOULD BE CONFIRMED BY THE SENATE BEFORE THEY START WORK IN THE HIGH COURT.

STENNIS SAID HE WAS "IN NO WAY ATTACKING THE LAW CLERKS OR THE JUSTICES THEMSELVES," BUT FELT "SENATE CONFIRMATION SHOULD BE REQUIRED" FOR THE CLERKS WHO SERVE THE MEMBERS OF THE HIGH COURT.

"IT IS GENERALLY KNOWN THAT THESE YOUNG MEN ASSIST IN THE REVIEW OF THE RECORDS AND WORK ON ACTUAL CASES BEFORE THE COURT, ALTHOUGH THE EXTENT OF THEIR ACTUAL PARTICIPATION IN ITS FUNCTIONS IS UNKNOWN," STENNIS SAID IN A SENATE SPEECH.

"WHEN ONE CONSIDERS THE VOLUME OF WORK DONE BY THE COURT AND THE COMPLEXITIES OF THE MANY INVOLVED MATTERS ARISING IN THE NUMEROUS CASES, I AM PERSUADED THAT THE INFLUENCE OF THE LAW CLERK AS TO THE DISPOSITION OF CASES IS CONSIDERABLE."

STENNIS QUOTED FROM A MAGAZINE ARTICLE IN WHICH A FORMER CLERK TO JUSTICE ROBERT JACKSON, WILLIAM H. REHNQUIST, SAID WHILE THERE WAS A WIDE RANGE OF POLITICAL OPINIONS AMONG THE LAW CLERKS, AS A GROUP THEY WERE "LEFT" OF BOTH THE COURT AND THE NATION AND HAD "EXTREME SOLICITUDE FOR THE CLAIMS OF COMMUNISTS AND OTHER CRIMINAL DEFENDANTS, EXPANSION OF FEDERAL POWER AT THE EXPENSE OF STATE POWER, GREAT SYMPATHY TOWARD ANY GOVERNMENT REGULATION OF BUSINESS."

HE SAID THE SENATE SHOULD INVESTIGATE THE SITUATION "WITH A VIEW TO ESTABLISHING MINIMUM QUALIFICATIONS FOR HOLDERS OF THESE IMPORTANT POSTS BY LAW," AND THE NEED TO PROVIDE PERMANENT PROFESSIONAL ASSISTANTS TO JUSTICES, RATHER THAN NEWLY-GRADUATED LAWYERS ON A ONE-YEAR BASIS.

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170 MAY 12 1958

70 MAY 12 1958 1333 WASHINGTON CITY NEWS SERVICE

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High Court Frees Another Red in Wake of Blast

"What Courts Are For"—Editorial, Page 16.

Special to The Chicago American

WASHINGTON, May 6—With the publication of FBI Chief J. Edgar Hoover's attack on the Supreme Court only hours old, the tribunal has freed another Communist convicted of violating the Smith Act.

The high court released Mrs. Oleta O'Connor Yates, party leader in San Francisco, who had been sentenced to a year for criminal contempt. The decision was that she had served sufficient time in jail during the litigation over her indictment. Three justices dissented.

Tradition binds members of the highest court to silence in the wake of the attack by Hoover.

49 REDS FREED

The FBI chief, in newly released testimony given Jan. 16 before a House appropriations subcommittee, criticized decisions which have freed 49 Communist party members and turned loose some criminals via the technicality and loophole route.

He said the court "must eventually come to grips in a realistice manner with facts and join all forces for good in protecting society."

By coincidence, presumably, Cleveland multimillionaire Cyrus Eaton blasted the FBI in a TV interview on the very day of publication of the Hoover attack.

The 74-year-old financier said the FBI and other policing agencies in the nation constitute a spy network greater than Hitler's Gestapo. He added there are no Communists in the United States "to speak of except in the minds of those on the payroll of the FBI."

Hoover's attack—unprecedented for him—coincides with a battle in the Senate over the Jenner-Butler Bill, which seeks to limit Supreme Court jurisdiction. Backed by conservative senators, the measure would permit states to enact their own sedition laws and allow prosecution under the Smith Act in cases of theoretical advocacy of Communist aims, rather than for incitement only.

Further, it would withdraw appellate jurisdiction in state bar admission rules, frequently used to ban lawyers with subversive connections, and give to congressional committees the right to decide on propriety of questions put to witnesses.

Hoover's attack recalls his unprecedented role in the Harry Dexter White case of 1953, a few years after White's death.

At that time, he told the Senate Internal Security subcommittee he had advised against retaining White, a Treasury Department employe, who had been named in an FBI report as an espionage suspect.

He charged that FBI efforts to keep an eye on White were hampered because President Truman's appointment of White as U. S. Director of the International Monetary Fund.

Since Hoover's blast at the Supreme Court, his detractors have been looking for an ulterior motive. They have revived reports that the FBI chief hopes to bring about the creation of an anti-Communist organization and to become its head.

UNDER CRITICISM

Under such a separation, according to the story, the FBI would confine itself strictly to policing of other crimes, and the new anti-Communist agency would absorb the Central Intelligence Agency, now headed by Allen Dulles.

Hoover has been under constant criticism from liberals. They charge FBI files contain raw materials which could be used to smear the agency's enemies to silence them.

This approach also is that of the Communists.

Hoover, in his recent book, "Masters of Deceit," says the Communist menace is a threat to our Western civilization.

This view is decidedly contrary to that of Eaton and the ranks of the FBI chief's detractors.

CHICAGO AMERICAN
DIAMOND Editi
Date MAY 6 - 1958
Page 2 Col. 5

52 MAY 28 1958

Notorious Yates Case

There can no longer be any doubt that political considerations, not legal interpretation, is behind the Supreme Court's recent decision to revoke the remaining part of a one-year contempt of court sentence imposed twice on California Communist party organizer, Mrs. Cleta O'Connor Yates.

In a four-page UNSIGNED opinion, with Justices Clark, Burton and Whittaker dissenting the Warren court reduced Mrs. Yates' sentence to the seven months she already has spent in jail. In a previous infamous decision the court had reversed the conspiracy convictions of five of 14 "second string" Communist leaders, on charges of conspiring to teach and advocate the violent overthrow of the government, and ordered new trials for Mrs. Yates and the eight others. But since that time Federal Judge William C. Mathes of Los Angeles—who called Mrs. Yates "the most coldly defiant and wholly contemptuous witness I have ever seen in more than 30 years at the bar and on the bench"—has reimposed the same one-year penalty. Now, the Supreme Court has come to the rescue of another accused Communist leader.

It must be said that the Supreme Court is consistent in its political decisions. Consider if you will the following: Cole vs. Young; Jencks vs. United States; Konigsberg vs. State Bar of California; Schware vs. New Mexico Bar Examiners; Watkins vs. United States; U. S. vs. Kitkovich; Sweezy vs. New Hampshire; Service vs. Dulles; Pennsylvania vs. Steve Nelon; Communist Party vs. Subversive Activities Control Board, and many other similar rulings.

It's obvious that the Supreme Court seldom makes an unpopular decision—unpopular with the Communist Party, that is.

Once again we call on our readers to save America from this judicial tyranny. The Jenner bill to curb the runaway Supreme Court will soon be up for Senate approval. Write now to your own senators and to senators from other states, asking them to vote for the Jenner bill, as amended by Senator Butler, to curb the high tribunal's self-indulging grab for power and its outrageous pro-Communist decisions.

MANCHESTER, N.H. UNION LEADER

Boston Traveler
Boston Herald
Boston Globe
Boston American
Boston Record
Christian Science Monitor

Date: May 8, 1958
Edition:
Author or
Editor: HUGH R. O'NEIL, Edi
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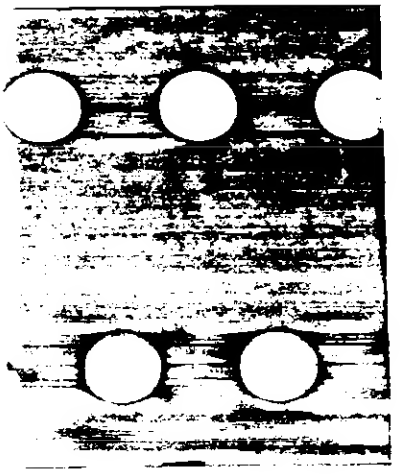

D HITS URB BILL

Bench Ought to Have ast Word' Generally to End 'Unsettled Conflict'

Special to The New York Times.

WASHINGTON, May 7 — Judge Learned Hand came out in opposition today to a pending Senate bill that would curb the power of the Supreme Court and overrule several of its recent decisions.

"Such a statute if enacted would be detrimental to the best interests of the United States," Judge Hand said. He expressed his views in a letter responding to one of Senator Thomas C. Hennings, Democrat of Missouri and a leading opponent of the bill. Senator Hennings read the letter on the floor.

The bill is a product of proposals by Republican Senators John Marshall Butler of Maryland and William E. Jenner of Indiana. It was approved by the Senate Judiciary Committee by a vote of 10 to 5.

The letter is significant because backers of the bill had been quoting Judge Hand, who saw long service as chief judge of the United States Court of Appeals for the Second Circuit, in support of their position.

In a series of lectures at Harvard Law School this winter Judge Hand, who is retired, cautioned against too ready use of the court's power to review the constitutionality of Federal legislation. He said the Supreme Court had on occasion overused the power and had made itself, in effect, "a third legislative chamber." These words have been quoted by the supporters of curbs on the court.

No Constitutional Point

In his letter to Senator Hennings, Judge Hand, who still sits as a judge, said he felt he should not comment on the constitutional question. But he said:

"It seems to me desirable that the court should have the last word on questions of the character involved.

"Of course there is always the chance of abuse of power wherever it is lodged, but at long last the least contentious organ of government generally is the court. I do not, of course, mean that I think it is always right, but some final authority is better than unsettled conflict."

The bill would prohibit the Supreme Court from reviewing any claims that the states had discriminated in excluding persons from the bar, and it would prohibit the courts generally from looking into the pertinence of questions asked by Congressional committees of witnesses later charged with contempt.

The bill would also re-interpret the Smith Act of 1940 to [illegible] theoretical

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N.Y. TIM
MAY

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41 MAY 21 1958

67 MAY 21 1958

Police and the Law

J. Edgar Hoover is a policeman —an extraordinarily good one who over the years has created the efficient Federal Bureau of Investigation and kept it free of politics.

As the nation's "police chief" Mr. Hoover is certainly in position to speak with authority on the extent and the character of Communist subversion in this country, as he has just done in testimony before a congressional committee. But it should be remembered that Mr. Hoover speaks from a policeman's viewpoint — and policemen are traditionally critical of the courts for leniency.

It is understandable that the head of the FBI, which has worked long and hard to bring Communist conspirators before the bar, should be piqued when the Supreme Court refuses to uphold their conviction on the ground that their constitutional rights have been violated. This has happened, Mr. Hoover said, in 49 out of 108 conspiracy cases since 1949.

Mr. Hoover has, in effect, lent his considerable weight to the current drive to curtail the Supreme Court's powers in these and other matters. There can be no question that there is, as Mr. Hoover says, a militant body of Communist conspirators bent upon stealing the nation's military secrets, and fomenting disorder and disruption by infiltrating legitimate organizations. But the real question is whether the individual liberties of all us would not be imperiled by measures aimed against the Communists.

That question still turns on the classic definition of "clear and present danger." It is this, and this only, that justifies the curtailment of constitutional guarantees. And it must be borne in mind that the legislation Mr. Hoover is supporting not only would narrow the area of individual rights, but would significantly alter the balance of power among the three branches of the federal government.

It has been 90 years since Congress last attempted to curtail the jurisdiction of the Supreme Court. We do not believe any case has yet been made for such drastic action today.

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ARKANSAS GAZETTE
LITTLE ROCK, ARKANSAS
5/9/58
Editoral by J. N. HEISKELL

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117 MAY 23 1958

6 MAY 23 1958

Supreme Court Decisions Criticised

It is small wonder that J. Edgar Hoover, FBI chief, has spoken out against the free and easy manner in which the U. S. Supreme Court has freed Communists. While testifying before a House committee, he delivered the following broadcast, and we deem it worthy of reproduction. He called upon the courts to "come to grips in a realistic manner with the facts," implying there has been more respect for the letter of the law than for the security of the nation. One by one, and in groups, Communists have been liberated by the Supreme Court. Men and women for whom the FBI waged battle in order to secure the evidence that led to their conviction.

We wonder if Hoover regards these court decisions as contributing to the security of the nation, convictions based on the grounds the defendants were plotting and working to overthrow the government. A few years ago Hoover opposed the outlawing of Communists on the ground that they would go underground and make it more difficult to keep in touch with their operations. Then came the prosecution, conviction and jailing of the leaders. After all these efforts had been expended, the U. S. Supreme Court started its policy of liberating Communists.

The last act of leniency to a convicted Communist was to order release from jail of Oleta O'Connor Yates, Bay Area Communist serving a one-year jail sentence for her refusal to answer questions. She was one of 14 Communists who were tried, convicted, and later released on order of the Supreme Court.

With crime and Communist activities increasing at an alarming rate, it behooves the government to renew its activities to curb the movement. This effort falls under the jurisdiction of the FBI which Hoover directs. We can not blame him for protesting when he sees his work undone by a court decree. It will cause no surprise if Congress takes steps to curb some of the acts of the Supreme Court unless there is a change of attitude toward the laws Congress enacts to safeguard the country from unlawful acts by Communists.

Vallejo Times-Herald
Vallejo, California
Date: 5/9/58
Managing Editor: J. Wyman Riley
City Editor: Wilson (Red) Buehrer
Publisher: Luther E. Gibson

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Gibson on Press List 5-26-58 mcg

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44 JUN 3 1958

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The Supreme Court Should Be Curbed

The Senate Judiciary Committee has reported favorably by a vote of 10 to 5 a bill to limit certain types of Supreme Court jurisdiction—authority to do so being specifically vested in Congress by the federal Constitution and spelled out in detail in that document.

The bill would stop the Supreme Court from overturning a state's decision on what lawyers can practice in state courts—the Court having ruled that a state could not bar a Communist from practicing as a lawyer.

The measure would take away from the Supreme Court authority to determine what questions Congress can ask of witnesses through its committees, the Court also having stepped into this field with limitations which could destroy effectiveness of congressional committee investigations into subversion, espionage, treason and similar fields.

The bill also would restore to the states the power to set up their own laws against subversion and sedition within their own boundaries—a power nullified by a recent Supreme Court decision.

The bill further would authorize Congress to pass a law against advocating overthrow of the federal government—a law which would have teeth which could not be pulled by the Supreme Court. This has become necessary because the Supreme Court has ruled that the Smith Act is valid in prohibiting advocacy of overthrow of the federal government by violehce but that it is invalid if this advocacy is presented only in what the Court considers a "theoretical" manner. The result is that the Supreme Court virtually has nullified both the Smith Act and its own previous approval of the Act.

Certainly there is obvious need for congressional action of this type—and probably for considerable more action in relation to the Supreme Court than is included in the bill approved by the Judiciary Committee. Yet, in widely separated parts of the country there is vigorous opposition to the measure and almost all of it seems to be built on the same foundationless cry—that those advocating the bill are trying to wreck the Supreme Court because they happen to disagree with some of its decisions.

A few days ago, in reporting the Senate Judiciary Committee's action, TV news broadcaster David Brinkley said that this measure was "dreamed up by Senator Jenner" of Indiana. To some viewers he seemed to feel that one should go through some special asepsis, at least figuratively, before associating with Senator Jenner even orally.

Such widely known newspapers as the Washington *Post* and New York *Times* in the East, the Denver *Post* in the Rocky Mountains, the Minneapolis *Tribune* in the far north, and various others of the same sociological stripe editorially, have taken up the cry that Senator Jenner or Senator Eastland or somebody else has put over the bill because they "disagreed" with Supreme Court decisions. Fortunately, some equally important papers—such as the Cleveland *Plain Dealer* and the Los Angeles *Times* support the principle of a congressional curb on the Court.

Actually, disagreement with Supreme Court decisions of the type which would be curbed in the Judiciary Committee bill is widespread and includes committees and past presidents of the American Bar Association as well as eminent students of constitutional law, federal judges, and others.

The Senate Judiciary Committee bill and the original Jenner bill to curb the Supreme Court are about as unlike as a cat and a dog. The Jenner bill was, to all practical purposes, scrapped almost before it got out of swaddling clothes. The Butler bill was substituted and now the Senate Judiciary Committee has substituted a bill of its own for the Butler bill. It's rather a far cry to attribute a bill approved by 10 out

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DON EWING, ASSOCIAT
EDITOR
THE SHREVEPORT TIME
SHREVEPORT, LA.
5/10/58
Page 4 A Col. 1 & 2

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44 MAY 23 1958

50 MAY 26 1958

of 15 Senators on a committee—including both liberals and conservatives, Republicans and Democrats, among the 10—to Senator Jenner when the bill bears virtually no relation to his measure except that both dealt with the same subject; it is especially a far cry since the Jenner bill itself long since has been dead.

The *Wall Street Journal*, in discussing the Senate Judiciary Committee bill, brings out very clearly just why such legislation is being put forth at this time. After pointing out that Congress has the power to limit appellate jurisdiction of the Supreme Court, it continues:

"There is no question, though, why the suggestion of applying that power has arisen. Professor Corbin, former Yale Law School faculty member and an authority on contracts, had some things to say on that score the other day. Professor Corbin said there was a great deal of difference between the slow development of law based upon well-established trends and the 'sudden about-face that reverses judicial and legislative doctrine, arousing violent criticism and emotion because it is based on social and economic trends already in open political dispute.'

"Such about faces, even the most dedicated supporter of the present Supreme Court would readily admit, are not unknown in its decisions.

"The High Court does not always follow the letter of the law as enacted by Congress; it sometimes reads into it matters which are not there. A case in point is the decision a few years ago that producers of natural gas came under the jurisdiction of the Federal Power Commission, though the legislation on which the decision was based clearly and specifically excluded producers of natural gas.

"Nor does the Supreme Court always follow its own prior rulings. Just last June, the court ruled on the question whether civilians overseas were answerable to courts martial. The case before it was one containing the same facts, the same people, the same shootings and the same United States Constitution as the Supreme Court had ruled on almost exactly one year before. And it brought in two different decisions on the same case within that time. Clearly, the court could not have been right both times.

"Or take the decisions on the right of congressional investigators to ask questions. The Supreme Court has ruled that Congress can ask only 'pertinent' questions and then the Court proceeded to decide that some of them were not pertinent to any valid legislative inquiry. But how, it may fairly be asked, can Congress legislate properly with a Supreme Court sitting over it deciding that this or that question is not pertinent—or that perhaps it is too impertinent—to the matter Congress is investigating?

"These are some of the questions that disturb Congress. There are others. There is the decision that splits hairs on the Smith Act, when the Court held that 'theoretical advocacy' of overthrow of the government was all right but that 'incitement to action' was all wrong. That is something like saying it is all right to teach people ways and means to rob banks so long as the teacher doesn't say when to do it.

"The result of all this has been to create a great deal of bewilderment about the law—as justices of the Supreme Court have from time to time pointed out when they disagreed with their brethren.

"Whether what the Senate Judiciary Committee proposes is the cure for the bewilderment we quite frankly do not know. But we rather doubt it. Far better than a curb by law would be the curbs of logic, reason and continuity of decision Professor Corbin spoke of. But those are curbs no Congress can apply. They are curbs only the Supreme Court may apply to itself."

0-19 (Rev. 10-29-57)

Many Feel High Court Can Upset Curbs Itself

By HOWARD L. DUTKIN
Star Staff Writer A12

Even if the Jenner-Butler bill to curb the powers of the Supreme Court clears the hurdles of Congressional approval and Presidential sanction, many lawyers feel its main provisions will be stricken down by the same court it seeks to restrict.

They believe, as ultimate arbiter of what is constitutional, the Supreme Court will have clear grounds for declaring unconstitutional at least two of the bill's provisions whenever the issues are tested.

Clearly vulnerable to attack on constitutional grounds, they say, are these provisions:

1. Making a Congressional committee itself the judge of whether a question asked a witness is "pertinent," that is, has a direct bearing on the matter under investigation.

2. Expanding the Smith Act to penalize "theoretical advocacy" of violent overthrow of the Government. Last year, the Supreme Court held that the act covered only advocacy that constituted an "incitement to action" and not the preaching of violent overthrow as an "abstract doctrine."

Article I of the Constitution gives Congress the power to legislate. Implied in this is also the power to investigate so that facts may be obtained pointing to the necessity for new legislation.

But the individual has certain rights also. Among these, it is contended, is the right not to be hauled before congressional investigators and questioned on matters having no real bearing on the subject under inquiry.

Invasion of Rights

If the committee arbitrarily may determine which questions are "pertinent" it is in effect intruding on the rights of the individual and exceeding the implied powers of investigation, many experts say.

They also contend that the question of pertinency, interpreted as a legal one, must be decided by the courts. Any attempt to remove this from court authority would be a usurpation of power by the legislative branch in violation of the separation of powers doctrine.

For discussion of the chances the Jenner-Butler bill has to pass Congress, see Page A-25.

The "theoretical advocacy" provision could be thrown out as violating the safeguard of freedom of speech and belief, constitutional experts say.

There are, of course, limitations on the right of free speech. But it has been held that such curbs may be applied only when abuse of the privilege constitutes a "clear and present danger" to the state. This peril does not arise from anyone suggesting in an abstract philosophical way that the Government should be overthrown, it is contended.

Other Two Provisions

Many lawyers agree that there probably is nothing unconstitutional about the other two provisions of the bill. These would:

1. Permit the States to write and enforce their own laws against subversion.

2. Bar the Supreme Court from reviewing cases involving State regulations on admissions to the bar. Incorporation of this provision arose from a Supreme Court decision that reversed rulings of State courts excluding a lawyer from the bar because of alleged Communist affiliation.

The latter provision, some believe, readily lends itself to manifestly unfair practices. Fears are expressed that a State theoretically might bar attorneys from practice merely because they took an unpopular side on issues such as race segregation.

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Wash. Post and Times Herald
Wash. News
Wash. Star A12
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader

Date MAY 11 1958

52 MAY 16 1958

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Congress and Control of Subversives

FBI Director J. Edgar Hoover has pointed out to Congress that decisions of the U. S. Supreme Court have resulted in the freeing of 49 Communist Party leaders convicted by federal juries under the conspiracy and membership provisions of the Smith act.

Mainly, this reversal of convictions has been the result of the Supreme Court decision of last June 17 holding that "theoretical advocacy" of violent overthrow of the government, in the absence of actual incitement to such action, is not a crime. The Senate judiciary committee has approved a bill designed, among other things, to label the teaching or advocacy of overthrow of the government by force or violence or by the assassination of any of its officers, as criminal even if there is no incitement to immediate action.

Senator Hennings of Missouri has branded this bill as "one of the most irresponsible pieces of serious legislation reported by a committee to the Senate since I have been a member." We do not see how this charge could have justification.

Clearly, Congress has the right and the duty to pass laws, and to class certain acts as criminal. The Supreme Court has the right to review these laws and interpret them in the light of the Constitution. In passing on the Smith act, the court said in effect that Congress did not perform its function as well as it intended. Surely there can not be anything irresponsible in Congress now acting to make its intention as clear and unmistakable as possible.

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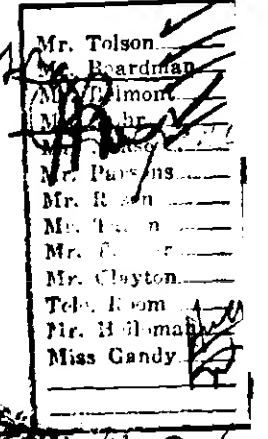
44 MAY 27 1958

- Editorial -

"Ft. Worth Star Telegram"
Ft. Worth, Texas, 5/11/58

John Ellis, Editor

60 MAY 28 1958



Hoover's Criticism

Testimony critical of the Supreme Court was given by J. Edgar Hoover, director of the Federal Bureau of Investigation, before a House Appropriations subcommittee on Jan. 16. This was revealed Monday by the Chicago Tribune.

Since 1949, Hoover said, juries have convicted 108 Communist party leaders of violating the Smith Act, but as a result of Supreme Court decisions only 59 of those convictions have been allowed to stand.

In much of his testimony Hoover was quoting others — "a top Communist functionary," otherwise unidentified, the late Justice Cardozo of the U. S. Supreme Court, and Judge John C. Bell Jr. of the Pennsylvania Supreme Court—but he was his own authority for the observation that:

"The courts must eventually come to grips in a realistic manner with facts and join all forces for good in protecting society."

The implication was clear that the Supreme Court is not now dealing realistically with facts and helping to protect society.

Hoover was appearing before the subcommittee in support of a request for funds to run the FBI in the coming fiscal year. He could be excused, therefore, for emphasizing the difficulties which confront his department. Not, however, for criticizing the Supreme Court.

A chief of police does not ordinarily take it upon himself to second-guess a judge, and this is exactly what Hoover was doing.

The Supreme Court has said there are constitutional defects in some of the laws which the FBI is trying to enforce. Instead of telling Congress, in effect, that he thinks the Supreme Court is wrong, Hoover should be asking Congress to revise the laws.

AKRON BEACON JOURNAL
Akron, Ohio
May 12, 1958
Editor, John S. Knight

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Jenner-Butler Bill

The Jenner-Butler bill approved by the Senate judiciary committee labors under the initial handicap of having no other title that accurately and briefly describes it. It is loosely called a bill to limit the appellate jurisdiction of the supreme court, but there is only one provision—a separated one—that invokes this Constitutional Congressional right. This is in respect to state rules for admission to the bar.

The three other provisions represent an omnibus or quasi-omnibus effort to carry out, in as many instances, an indisputably normal function of Congress, depending in no sense on the "jurisdiction regulation" clause. Where the supreme court has decided cases on the basis of the intent of Congress, the meaning of statutory statements, it is perfectly proper for Congress to clarify and amend the statutory language; and this does not mean that the court cannot if it still sees fit strike down the new language.

The common link between each section and the two main parts is subversion — its discouragement, punishment, statutory handling. The bill could in this connection be called a bill to correct certain strained interpretations of the supreme court and (in one instance only) any and all interpretations, involving national security.

The bill labors under the further handicap of being virtually unknown in content. With the better conservation of national security in respect to quisling fifth-columnists as a premise, there should be widespread interest in whether the bill, in whole and in part, in the language employed and the methods adopted, actually has promise or the best promise, of attaining or moving toward attainment, of the purpose. It has, however, been inadequately reported; and one result has been the encouragement of off-cuff disparagement by a few critics who seem to want all the issues smothered in a shouting match.

Each section of the proposal has basic reference to controversial decision of the supreme court. In each case the text of the decision should be basic to the background. Few people for example know what principles were involved or said to be involved in the court's taking jurisdiction of state bar admissions, except that Communists or Fifth Amendmenteers figured.

If the section based on the Watkins "pertinency" case is correctly reported, it still does not go far enough to meet the main and most troublesome part of that troublesome decision; namely, that the "subject of legislative inquiry" first must be made clear to a witness endangered by a contempt sentence. How it could have been made any clearer, by any individual in this particular case, using the court's own language, is simply baffling.

[redacted]

The Times-Picayune
New Orleans, La.
May 12, 1958
Page 12 Col 2
Editorial
George W. Healy Jr.
Editor

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44 MAY 26, 58
EX-136

63 MAY 27 1958

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WARREN COURT CURB NEWS

What we'd call a quaint and curious speech was delivered in Chicago night before last by Charles S. Rhyne, president of the American Bar Association.

Mr. Rhyne called "unwise and unsound" the Butler-Jenner bill to curb the Earl Warren Supreme Court. He added that all lawyers should defend courts and judges from denunciation.

Charles S. Rhyne

The Butler bill merely seeks to make the Warren court stop nullifying state anti-sedition laws, interfering with Congressional investigators, and knocking over state rules barring Communists or Fifth Amendment clams from practicing law.

Except in certain cases not covered by the above list, the U. S. Constitution (Art. 3, Sec. 2, Subd. 2) says "the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Clearly, Congress has a right to pass this bill; and just as clearly, Congress' collective judgment as to its soundness is better than ABA prexy Rhyne's personal judgment.

As for lawyers' being obligated to defend all courts and judges, we call that hogwash. Courts and judges can and do make mistakes. Lawyers are better qualified than anybody else to spot such mistakes. If you ask us, any lawyer who stands up and attacks these errors is doing his public duty, and any lawyer who keeps quiet about them is only furthering some judges' ambition to make themselves and the courts sacrosanct.

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Date MAY 14 1958

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41 MAY 20 1958

67 MAY 21 1958

Mr. Tolson
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UP200
ADD 1 SUPREME COURT (UP187)
THE MINORITY REPORT DESCRIBED THE BILL AS A "HODGE-PODGE" BILL, APPROVED WITHOUT "ADEQUATE HEARINGS. IT SAID THREE OF THE FOUR SECTIONS "RAISE GRAVE CONSTITUTIONAL ISSUES."
IN A POINT-BY-POINT BREAK-DOWN, THE MINORITY REPORT HAD THIS TO SAY ABOUT EACH OF THE FOUR SECTIONS OF THE BILL:
SECTION 1, WITHDRAWING SUPREME COURT JURISDICTION FROM APPEALS BY STATE BAR APPLICANTS--WOULD GIVE STATE SUPREME COURTS "OPEN SESAME" IN DECIDING WHETHER A STATE BAR APPLICANT WAS FIT TO PRACTICE LAW ON RACE RELIGION OR OTHER GROUNDS.
SECTION 2, AMENDING THE CRIMINAL CONTEMPT OF CONGRESS STATUTE TO PROVIDE THAT ANY QUESTION TO A WITNESS WOULD BE "PERTINENT" UNLESS THE WITNESS CITES AN OBJECTION ON PERTINENCY AND PROVIDING A CHAIRMAN'S RULING ON PERTINENCY WOULD BE "FINAL"--AN OUTRIGHT USURPATION OF JUDICIAL POWER BY THE LEGISLATURE."
SECTION 3, LIMITING THE COURT'S APPELLATE JURISDICTION IN SUBVERSION CASES--WOULD "IN ONE SWOOP REVITALIZE" STATE STATUTES, SOME OF WHICH ARE "PLAINLY AT VARIANCE" WITH FEDERAL LAW, AND CONTRARY TO THE "NEED FOR A UNIFORM NATIONAL STANDARD AND INTEGRATED CENTRALIZED PROGRAM."
SECTION 4, AMENDING THE SMITH ACT--"...CONTAINS AN OUTRIGHT INVITATION TO THE SUPREME COURT TO DECLARE IT UNCONSTITUTIONAL."
"...."CLEARLY LOADED FOR THE PURPOSE OF BRINGING DOWN UPON THE SUPREME COURT A WAVE OF EMOTION..."
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WASHINGTON CITY NEWS SERVICE

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UP187

(SUPREME COURT)

A SHARP BIPARTISAN MINORITY REPORT TODAY CRITICIZED A BILL TO LIMIT THE POWER OF SUPREME COURT FOR ITS "KILL THE UMPIRE" PHILOSOPHY AND ATTEMPT TO "INTIMIDATE AND COERCE" THE HIGH BENCH.

FOUR MEMBERS OF THE SENATE JUDICIARY COMMITTEE SIGNING THE REPORT MAINTAINED THAT THE JENNER-BUTLER BILL WOULD "FRUSTRATE" EFFORTS TO COMBAT INTERNAL COMMUNIST SUBVERSION "ALTHOUGH THE BILL IS PREMISED ON A DESIRE TO STRENGTHEN THAT FIGHT."

SENS. THOMAS C. HENNINGS (D-MO.), ALEXANDER WILEY (R-WIS.), JOHN A. CARROLL (D-COLO.) AND ESTES KEFAUVER (D-TENN.) SIGNED THE REPORT MADE PUBLIC TODAY. SEN. WILLIAM LANGER (R-N.D.) REPORTEDLY WAS FILING A SEPRATE MINORITY REPORT.

HENNINGS SAID IN AN ACCOMPANYING STATEMENT THAT THE EXTENT OF THE BILL IS TO MAKE THE COURT THE "WHIPPING BOY OF CONGRESS" AND PREDICTED "SEVERAL WEEKS" OF DEBATE IF THE BILL IS BROUGHT TO THE SENATE FLOOR.

KEFAUVER SAID HE HAS "SOME RESERVATIONS" ABOUT SIGNING THE MINORITY REPORT REGARDING TWO SECTIONS OF THE BILL--THREE AND FOUR--"PROVIDED APPROPRIATE AMENDMENTS COULD BE DEVISED."

WILEY SAID IN ADDITIONAL MINORITY VIEWS FILED TODAY THE BILL WOULD "ROB INDIVIDUALS OF IMPORTANT CIVIL RIGHTS AND "UNDERMINE AND UNBALANCE" THE SEPARATION OF GOVERNMENTAL POWER UNDER THE "GUISE" OF ATTACKING THE COURT BECAUSE OF "CERTAIN UNPOPULAR" OPINIONS.

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WASHINGTON CITY NEWS SERVICE

0-19 (Rev. 10-29-57)

Injudicious Judges

The District of Columbia Circuit Judicial Conference presented a disgraceful spectacle.

There is a doctrine in the Constitution of the United States and in our tradition which says that there is a separation of powers of the executive, the judicial and the legislative branches of Government. At the Judicial Conference we had a member of the executive branch of Government, the United States Attorney, and his assistant, Thomas Flannery, imploring the Conference to ask the legislative branch of Government to nullify the ruling of the highest court in the Nation.

Even after Chief Judge Edgerton said that, as a judge, he would refrain from voting on a motion to recommend that Congress change Rule 5 (a) of the Federal Rules of Criminal Procedure, the judges of the United States District Court for the District of Columbia, on the not too subtle urging of their chief judge, voted to recommend to Congress that Rule 5 (a) be amended to void a unanimous decision of the Supreme Court. The votes of these judges decided the action of the Conference.

More disgraceful was the fact that the judges of the United States District Court for the District of Columbia asked the Congress to censor the Supreme Court of the United States for its ruling in *Andrew Mallory* v. *United States*. How can judges who did this expect lawyers, litigants and the public to respect them when they cast the deciding votes to ask for legislation to nullify the decisions of the Supreme Court? One wonders if they were motivated by the fact that so many cases heard by the Supreme Court arising in the District of Columbia Circuit in the past 10 years have been reversed.

If our local judges are to be respected, they must conduct themselves in a manner to demand respect.

WILLIAM J. WILKINS.

Washington.

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Date MAY 16 1958

REC- 26
162-225151
NOT RECORDED
117 MAY 22 1958

EX-103

53 MAY 26 1958

High Court Jurisdiction Challenged

Congress Debate Is Under Way

WASHINGTON, May 17 (U.P.)—A great constitutional debate is developing in Congress because two men were barred by their states from becoming lawyers.

Their names are not important. The constitutional furor they stirred up is.

One case arose in California. An applicant for the bar was asked whether he had ever been a Communist. He refused to answer. The California board set up to rule on the qualifications of applicants for the legal profession refused to admit him. He appealed. The state Supreme Court upheld the ruling. The United States Supreme Court reversed it.

New Mexico Case

The second case developed in New Mexico. There, an applicant for an attorney's license acknowledged he had been a member of the Communist party for six or seven years in the 1930s. The New Mexico board said that was enough to disqualify him. The state courts held the same way. But the Supreme Court again ruled otherwise.

The two cases started a chain reaction in Congress. A series of bills was introduced to upset the Supreme Court rulings. Recently, the Senate Judiciary Committee, by a 10 to 5 vote, approved a measure which among other things would say that, hereafter, the Supreme Court should keep hands off of all cases involving the admission of lawyers to practice before state courts.

Can Congress do this? Can Congress tell the Supreme Court it can't even hear a particular kind of case being appealed to it?

That's where the great constitutional argument comes in. The lawyers will debate this with great heat.

There's no question that Congress can limit the jurisdiction of the Supreme Court in appeals cases. The Constitution in very clear language gives Congress that power. Section 2, Article 3, of the Constitution says:

"... The Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

The word "exceptions" is emphasized by sponsors and supporters of the measure. They insist it is clear, under the Constitution, that Congress can make exceptions to the Supreme Court's jurisdiction, and that, they say, is all they're doing in the bill.

Opponents' View

The opponents, however, take another tack. They say that provision of the Constitution, just as any other, can't stand by itself. The Constitution must be considered in the whole, and how one section applies to another.

And they question what would happen if a state tried to impose a rule for those seeking admission to the bar which clearly violated another section of the Constitution. Would the Supreme Court then be banned from even hearing the case?

For example: Suppose a state imposed a rule disbarring a lawyer without even a hearing. That would violate the due process clause of the Constitution. Would the proposed law mean that the could could not uphold the defendant's constitutional rights? Or suppose a state had a qualification which was clearly discriminatory, in violation of the Federal Constitution? Would the Supreme Court be barred there, too?

Opponents of the bill argue that the measure heads in a dangerous direction which could make the Supreme Court a court in name only, with no cases at all to consider.

Congressional leaders are giving the bill scant hope for passage.

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MAY 18 1958

0-19 (Rev. 10-29-57)

Court-Curb Bill Voted by Committee

WASHINGTON, May 20 (AP) —A majority of the Senate Judiciary Committee today urged passage of a bill to curb the Supreme Court and said Congress has a duty to restore "a proper balance of powers."

The measure, approved in a 10-5 vote by the committee, would strip the Supreme Court of its appellate jurisdiction over cases involving the admission of lawyers to practice in state courts and undo the effects of recent rulings in some Communist cases.

A previously filed minority report denounced the bill as an attempt to intimidate and coerce the court and reduce it to "a whipping boy" of Congress.

The most controversial part of the bill is the section curtailing the court's review powers, but the majority report described this as "a minimal use of the Congressional power to regulate and make exceptions to the appellate jurisdiction of the Supreme Court."

As originally introduced by Sen. William E. Jenner, R., Ind., the bill would have stripped the court of authority to hear appeals in five different categories of cases instead of just those relating to the admission of lawyers to practice in state courts.

The majority report said that while Congress has the power to withdraw jurisdiction as proposed by Sen. Jenner, the committee had concluded that "it would be wisest for now to confine the use of this power to a single area."

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0-19 (Rev. 10-29-57)

Killing the Umpire

One approach to the Jenner-Butler bill, which would modify some recent Supreme Court decisions, is to denounce it as a measure designed to "kill the umpire." This is not an approach which reflects much credit on the maturity of those who adopt it.

The bill would do four things. The first provision would deprive the Supreme Court of jurisdiction to overrule a refusal by a State to permit an individual to practice law in the State. This is a reaction to two questionable decisions last year, and in some small degree it would curb the power of the court. It is not an earth-shaking issue, for any person denied permission to practice law would have an appeal to the courts of the State. The question is whether the issue is of sufficient importance to justify Congress in exercising its constitutional power to limit the court's jurisdiction. We doubt that it is.

The second provision would modify the court's controversial ruling in the Watkins case by stipulating, in effect, that a congressional investigating committee, once the issue has been raised, shall be the final judge as to whether a question asked a witness is pertinent to the investigation. Some correction of this sort, if it can be done within constitutional limits, may well be necessary to insure the effectiveness of congressional investigations.

It is clear that the third and fourth provisions lie well within the authority of Congress. One deals with a ruling that Congress had intended to pre-empt the field in dealing with subversive activities. The other involves a judicial interpretation of the intent of Congress in passing the Smith Act, under which several Communist leaders have been convicted. We do not see how there can be any argument respecting the right of Congress to enact these provisions. For if the court has misinterpreted the intent of Congress, or if Congress failed to make its intention clear, it can hardly be doubted that the national legislature, if it thinks it is wise to do so, can adopt corrective or clarifying laws. And these certainly will not kill the umpire.

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Perhaps there should be one final word on this latter point. The kill-the-umpire outcry seems to be based on the fallacious notion that the court is aloof from politics and should be immune to attack or criticism. There is nothing in our national experience to support this view. In the broad sense of the term, the court has always been involved in politics. If anyone doubts this, he should refresh his recollection with respect to the clashes between the court and such Presidents as Jefferson, Jackson, Lincoln, Grant and Franklin Roosevelt. In some of these clashes the court prevailed. In others it was curbed. But it is still, perhaps, the most powerful of our three branches of government—subject to no restraint except self-restraint, or, in rare instances, to the restraint which can be imposed upon it by a Congress or a President. In this instance—in the case of the Jenner-Butler bill—there is no significant threat to the independence or to the proper authority of the court. The real question is whether it is wise to adopt any or all of the bill's provisions, and this is for Congress to decide.

Today in National Affairs

Illegal-Picketing Curb Seen In Supreme Court Decision

By DAVID LAWRENCE

WASHINGTON, May 27.—When a "picket" line blocks a worker from entering a factory, his right to work is interfered with and any one naturally assumes that state laws provide a remedy. Yet, when the Supreme Court of the United States renders a decision to that effect, as it did this week, it becomes first-page news and is a matter of general surprise.

Lawrence

The reason is that the Supreme Court in recent years, in decision after decision, has upheld the immunity of labor unions from punishment for most of the abuses which have caused nation-wide complaint. Now that the court has ruled that, when a worker—even though not a union member—is prevented from entering the factory where he has a job, he may recover money damages from the union not only for lost pay but for any worries caused thereby, the pendulum has swung back in picketing cases to where it ought to have been for many years.

Dissenting Vote Revealing

The court decided the case by a vote of 6 to 2, as one justice didn't participate. The dissenting opinion, however, written by Chief Justice Warren and concurred in by Justice Douglas, really contains a most interesting revelation. The Chief Justice says that the man who was kept from working should not have been allowed to sue in a state court and that "there is a very real prospect of staggering punitive damages accumulated through successive actions by parties injured by members who have succumbed to the emotion that frequently accompanies concerted activities during labor unrest."

Reasoning Disputed

It is amazing that the Chief Justice would be willing to deny complete relief to an injured worker just because the precedent might thereafter be bothersome or annoying or costly to labor unions. Such solicitude is understandable when uttered by a labor partisan, but it is surprising when it comes from a member of the highest tribunal, which is supposed to be impartial and primarily concerned with the law as written and not its political or economic consequences.

Curious reasoning is also revealed when the Chief Justice asks: "Must we assume that the employer who resorts to a lockout is also subject to a succession of punitive recoveries at the hands of his employees?" The answer is that every employer has always been subject to damage suits for violation of any contract and will continue to be if his "lockout" is in violation of a valid contract with a union.

Effect on Picketing

There is no doubt that the majority opinion of the Supreme Court will have a salutary effect on picketing as it lately has been practiced in America. Here is how Justice Burton, who wrote the court's opinion in this case, describes what unhappily has become common practice in labor disputes:

"Such pickets . . . by force of numbers, threats of bodily harm to Russell and of damage to his property, prevented him from reaching the plant gates. At least one striker took hold of Russell's automobile. Some of the pickets stood or walked in front of his automobile in such manner as to block the street and make it impossible for him and others similarly situated to enter the plant."

Liability for Members' Acts

This is a familiar story. It happens usually with the sanction of union leaders. But Chief Justice Warren isn't preoccupied with what unions must do to discipline their members and to abolish "goon" tactics. He is more concerned that the court's decision might hurt unions financially—which, of course, should be a deterrent in itself. He writes:

"By reason of vicarious liability for its members' ill-advised conduct on the picket lines, the union is to be subjected to a series of judgments that may and probably will reduce it to bankruptcy, or at the very least deprive it of the means necessary to perform its role as bargaining agent of the employees it represents."

One wonders why the Chief Justice isn't as concerned with the plight of the employer against whom costly strikes are inflicted.

"Right to Work" Issue

There has been quite a controversy lately about "right to work" laws in the various states. These would give the individual the right to join or not join a union and would prevent penalties being imposed against non-union workers. Most union leaders have opposed such laws, and certain unions today are asking Congress to legalize a "closed shop" monopoly.

The latest Supreme Court decision would seem to imply that, even without "right to work" laws, citizens may sue a union for damages if deprived of a job. It's a privilege of citizenship inherent in the Constitution. But in recent years it has not even been accorded the respect of being termed a "civil right." Times may be changing.

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Group's Powers Involved

Row Likely Over High Court Bill

By JACK STEELE Scripps-Howard Staff Writer

A bitter squabble is due to erupt in the House this week over a sweeping proposal to curb the powers of the Supreme Court.

This newest anti-Supreme Court move involves a "states' rights" bill sponsored by Rep. Howard Smith (D., Va.). It cleared the House Judiciary Committee a few days ago in a surprise action.

H. R. 3

The measure — known as H. R. 3 — would revere the "pre-emption" doctrine under which the Supreme Court has held that Federal laws supersede similar or conflicting state laws.

The Smith bill contains only 81 words, but it has touched off many controversies.

Lawyers disagree violently over its meaning and possible effects.

Opponents charge it might be used to limit the civil rights of Negroes, and even to upset the Supreme Court's desegregation decisions. Others say it could lead to new restrictions on labor unions.

Supporters insist its main purpose is to restore the validity of state anti-subversion laws which the Supreme Court has voided. The bill also has split the Republican and Democratic parties.

Atty. Gen. William P. Rogers has denounced it as a "shotgun" approach to limiting the powers of the Supreme Court and of the Federal Government.

President Eisenhower is expected to urge GOP congressional leaders at their weekly meeting Tuesday to oppose the bill.

But most of the GOP members of the Judiciary Committee joined with Southern Democrats to report the measure to the House. And one House leader estimates that two-thirds of the Republican members now favor the bill.

REPORT

Chairman Emanuel Celler (D., N. Y.) of the Judiciary Committee is expected to file soon a blistering minority report against the bill.

House Democratic leaders, who agreed last year to shun any "shotgun" legislation against the Supreme Court, presumably will fight the bill.

But the powerful House Rules Committee—headed by Rep. Smith—is expected to clear it to the floor for a vote within a few days. Rep. Smith insists the bill has nothing to do with civil rights or labor.

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191 JUN 16 1958

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70 JUN 17 1958

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Capital Circus

(By Ted Lewis, NY

Daily News, June 10

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FBI/DOJ

The Supreme Court did not make any major decisions yesterday, and its friends in Congress hope that this performance will be repeated every Monday until recess There are many pivotal cases facing the Court, whose outcome could sway some legislators, as yet uncommitted on the Butler bill, which would limit the Court's powers substantially in some areas. Among the cases that many would like postponed are: the decision of an Alabama court upholding a $100,000 fine against the NAACP for failure to produce its membership records; a case involving the power of the government to deny passports to those refusing to sign the non-Communist affadavit; the right of a state to dismiss an employe taking the Fifth Amendment; the constitutionality of California's requirement that applicants for property tax exemption sign loyalty oaths.

The Senate Judiciary Committee has voted 10-5 to bring the Butler bill to the Senate floor, and even its opponents concede that they cannot sit on the measure forever. When the bill gets to the floor, the fight will be bitter, and will cross party lines. Some of the firing has already begun. Sen. Hennings(D-Mo) has warned that at least two weeks of debate was certain, and Sen. Kefauver(D-Tenn) blasted the bill as dangerous, "reversing years of judicial and legislative history". He further warned that "the result of its passage would be chaos."He inserted into the record the recommendations

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of the American Bar Association that the legislation be killed "as an attack on the independence of the judiciary, destructive of the spearation of powers contemplated by the Constitution." On the other side, Sen. Jenner(R-Ind) inserted into the record a speech delivered by a Georgia lawyer describing Earl Warren in terms originally used by John Randolph of Virginia in 1825 to describe a bureaucrat: "His mind is like the Susquehanna Flats; naturally poor and made less fertile by cultivation. Never has ability so far below mediocrity been so richly rewarded since Caligula's horse was made consul." Majority Leader Johnson, would like to get the "must" bills out of the way, and then let the Butler bill be talked to death. But Sen. Eastland(D-Miss), chairman of the Judiciary Committee wants action, and he may attach the court-curb to the Alaska statehood bill, if pressed.

On an ironic note, it is interesting to see how times and attitudes change. About 100 years ago, the Court was roundly applauded for the Dred Scott decision by southern Senators, and denounced for the same reason by Abraham Lincoln. About 20 years ago, when FDR tried his court-packing plan, one of the Senators who came to the rescue of the high tribunal was Eugene Talmadge of Georgia. Today, his son Herman, accuses the justices of trying to establish "a nine-man dictatorship."

Capital Circus

By TED LEWIS

Washington, June 9.—The nine members of the Supreme Court can see the Capitol through the trees in front of their marble palace and they certainly know that sponsors of a bill to curb the court's powers are getting mighty restive because other legislation is getting Senate right of way.

Obviously, that was not the reason the court handed down a series of comparatively minor decisions today. But with important rulings on Communist and civil rights cases definitely slated to be acted on before the summer recess, there were suspicions in the Senate chamber that the court would like nothing better than to delay these until the justices have their bags packed and can get out of town until October.

Those upcoming decisions have the potential of firing up the court critics in Congress and putting new oomph behind the pressure to get the curb bill before the Senate. One case, for example, concerns the $100,000 fine upheld by Alabama state courts against the National Association for the Advancement of Colored People for refusing to produce its membership list.

Other controversial cases on which rulings are due involve (1) the power of the government to deny passports to those refusing to sign the non-Communist affidavit, (2) the right of a state to dismiss an employe taking the Fifth Amendment, and (3) the constitutionality of California's requirement that applicants for property tax exemption sign loyalty oaths.

None of these was acted on by the court today, yet in two or

Sen. Estes Kefauver

found some ... o bypass or delay any more explosive dec... until the nex... ssion. For more than a month these leaders sat tight on the court curb bill, but they don't know how much l... they can keep it p... uheld. After all, the Senate Judiciary ... mittee, by a vote o... 0-6, approved it the first week in May under "club rules" legislation of this important committee cann... sidetracked indefinitely.

The committee's bill would prevent the high court from s... aside state rules for admission to the bar, would prohibit the ... from judging a Congressional committee's authority to question ... nesses, and reinstate state sedition laws which the court has ... invalid. The measure also clarifies the anti-subversion Smith ...

These court curbs were the committee's answer to past deci... which freed Communist leader Steve Nelson, 14 West Coast ... munists, and labor leader John Watkins who had refused to ... before the House Un-American Activities Committee. As fo... issue of admission to the bar, the court had ordered a New M... lawyer and another from California given licenses to practice ... though they refused to answer questions on Communist affiliatio...

A Blistering Battle Is Store

Sen. Thomas Hennings (D-Mo.), who opposed the bill and v... against it in committee, agreed today that it would have to be t... up this session. But he warned that two or three weeks of de... was certain. Both supporters and opponents of the bill fores... blistering battle in which party lines disappear once the legisla... gets on the floor for a showdown.

Typical of the strong feelings generated by the issue are re... Congressional Record quotes. Sen. Estes Kefauver (D-Tenn.) bla... the bill as dangerous, "reversing years of judicial and legisla... history" and "the result of its passage would be chaos."

Kefauver put in the record recommendations of an Amer... Bar Association committee that the legislation be killed "as an at... on the independence of the judiciary, destructive of the separa... of powers contemplated by the Constitution."

Jenner Quotes a Shot at Warren

Sen. William Jenner (R-Ind.) chief sponsor of the bill, off... in reply a speech delivered by a Georgia lawyer in which these ... paragraphs could be noted by Senate members:

"In all literature no clearer description of Earl Warren may ... found than that spoken of a bureaucrat on the floor of the Unit... States Senate in 1825 by John Randolph, of Roanoke:

"'His mind is like the Susquehanna Flats—naturally poor ... made less fertile by cultivation. Never has ability so far be... mediocrity been so richly rewarded since Caligula's horse was m... consul.'"

Boys Are Just Rehearsing

All this is a mere rehearsal to the bitter onslaughts on ... court—and the equally fiery defense of the court—that can ... expected when the Senate finally takes up the great issue.

There will be plenty of good historical allusions for both si... Back in 1857 Abe Lincoln denounced the Supreme Court for ... Dred Scott decision which was then lauded by Southern Senat... The court was also defended by Southern Senators and Governors ... the mid-1930s when F.D.R. tried to pack it. Georgia's Eugene T... madge helped organize a committee to save the court from F.D... but times change and his son, Sen. Herman Talmadge, now accu... the justices of trying to establish "a nine-man dictatorship."

The Senate Democratic Policy Committee, meeting tomorr... may decide on a time for considering the court curb measure. Wh... Sen. Lyndon Johnson (D-Tex.) and his lieutenants would like to ... is get "must" bills out of the way and then in the closing weeks ... the session bring up the court bill—letting it be talked to dea...

But they are faced with several problems. One is that Chairm... James O. Eastland (D-Miss.) of the Judiciary Committee wants actio... If forced, he will offer the court-curb as an amendment to t... Alaska statehood bill.

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Supreme Court Troubles

Southern doubts of Supreme Court wisdom are about to be shared by other regions. In the current issue of the magazine Life is an article which will bring to a great many readers for the first time a beginning of understanding of both the Southern attitude and of Supreme Court characteristics.

It is announced that the nation's highest court is involved in a "crisis of doubt" as to whether it is properly fulfilling its function as the "supreme interpreter of the American law."

We read that "the Court for some years has been falling into a swamp of slushy uncertainty." We learn that "There are no conservatives on today's court. There are simply two varieties of what many lawyers call 'the bleeding hearts.' One variety bleeds all the time. The other bleeds part of the time."

Troubles of the high court are broader than the South. There is the matter of confusion in 12 opinions on the same day as to the power to take away citizenship. There is the matter of a decision that overthrew laws of 42 states on security and subversion. There is the matter of freeing communist conspirators. And there is the general situation of changing from being a court of law toward being a court of justice, the one being devoted to meaning of the statutes while the other is concerned with effects on individual persons.

But the repeated example of Supreme Court troubles is the school segregation ruling of 1954 in which, the magazine says, the court precipitated the country's deepest social conflict since the Civil War. The observation is made that "the ultimate power of law lies in consent to law, and the special power of the court will have vanished if its judgment has to be generally imposed by force as it has had to be in Little Rock."

This magazine is a champion of desegregation. It is a newsworthy event for it to give such prominence to an article expressing doubts about the court's methods and accompany it with a full-page editorial in which dissatisfaction is expressed with the reasoning used in coming to the segregation ruling.

JOHN OSBORNE, a veteran of the Time-Life organization who was a boy in the Mid-South and a young man in Memphis, has written the Supreme Court article and done well in opening up some complex subjects rarely attempted in popular publications. He increases understanding, although the Southern school difficulties remain.

In one portion of the discussion we wish he had gone much deeper. He writes in plain words of the lack of legal scholarship on the part of Chief Justice EARL WARREN, and of his difficulties with intricacies of constitutional law.

It seems to us there could have been further presentation of the lack of judicial experience and the brevity of law practice on the part of other justices before they put on the imposing robes.

And, at least in the editorial, there could have been an examination of whether there would be such uncertainty about Supreme Court rulings—such a change in high court interests—such a crisis of public doubt about the supreme bench—if the Senate had refused to confirm any appointment to the nation's highest tribunal unless the judge was being promoted from one of the Federal courts.

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DAVID LAWRENCE

Congress and the Supreme Court

Democrats Seen Bottling Up Bill Aimed At Rulings on Reds, Crime, States' Rights

Since the Democratic Party controls both houses of Congress, the American people will be asked to hold it responsible in the November elections for acts of omission as well as commission.

It looks now as if the biggest single challenge flung at Congress will be ignored. For the Democratic Policy Committee of the Senate has declined thus far to permit a vote to be taken on a bill that would help the country fight the Communist conspiracy. The same old charge made in 1952 that the Democratic Party is "soft on communism" will be heard again during the coming campaign. Likewise, it will be said that the Democratic Party has turned a deaf ear to the mothers and fathers who want to see confessed rapists kept in jail instead of being allowed to roam around free to repeat their offenses.

The New York Daily News, which has the largest circulation of any daily newspaper in the United States, has just published a criticism with which many members of Congress in both parties have privately agreed but which they have not ventured to act on by passing remedial legislation. The News editorial says in part:

"It begins to look as if Congress—the current 85th Congress, that is, which expires at the year's end—has decided to put up no further fight against the Earl Warren Supreme Court's numerous kindnesses to Communists, attacks on the powers of congressional investigating committees, and invasions of States' rights and the crime-combating powers of police.

"The Butler-Jenner bill ... was approved weeks ago by the Senate Judiciary Committee—meaning it is eligible for debate and vote in the full Senate at any time. Yet the Senate's Democratic Policy Committee in its wisdom has kept the bill from being called up for action on the plea that more important legislation is before Congress and a long Butler-Jenner debate would only gum things up. Unless the bill is called up by mid-June, which is right now, the chance that it will be discussed at this session of Congress is slim."

The News charges that the Democratic Policy Committee has been guilty of an unpatriotic sidestepping of its duty, because the future of the Nation is endangered by the things the Warren court has been doing to United States rights and practices."

Among the recent decisions of the Supreme Court that have come in for severe condemnation by lawyers throughout the country are rulings that anti-sedition laws passed by 42 States cannot be applied to subversion unless Congress says so, and that persons who are Communists are eligible to practice law in any State, despite the laws of the States which forbid this.

The Supreme Court has released dozens of Communists on technical points and, as the New York Daily News says, the net result of the long string of court decisions is that "It is harder than ever before for the Government to combat the Red conspiracy to overthrow that same Government and make slaves of all Americans except Reds."

The editorial goes on to say that, by releasing a confessed rapist because the police held him for seven hours' conversation with them prior to his formal arraignment before a magistrate, the Supreme Court has confused police and prosecutors all over the country and has "enabled gangsters and other hardened criminals to thumb their noses frequently at the law."

What can be done about it? The Congress has before it the bill sponsored by Senator Butler of Maryland and Senator Jenner of Indiana, both Republicans. Provisions of this measure, if enacted, would strengthen the Smith Act so as to prevent members of Communist organizations from preaching treason and taking steps to overthrow our Government. The proposed law would keep the Supreme Court from telling the States whom they might admit to the bar and would give legal sanction to the rights of the States to deal with sedition and subversion.

Finally, Congress, as a coordinate branch of the Government, would, through the proposed legislation, exercise its right to decide what is or is not relevant to its own investigations and inquiries, which are designed to get information for guidance in writing future laws.

It is not a question of impairing the powers of the court as an institution, but of asserting the rights of Congress as granted by the Constitution itself. The big issue is whether the 85th Congress will surrender its rights. It has a chance yet to be known in history not as a craven Congress, but as a courageous Congress.

Baltimore [redacted]

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77 JUN 30 1958

DAVID LAWRENCE

Passport to Communist Danger?

Supreme Court Ruling Called Harmful To Nation's Efforts to Stem Subversion

Five members of the Supreme Court of the United States have shut their eyes to the "cold war." In effect, they say there are no American troops stationed in Western Europe today; there are no American troops now guarding the armistice line every day in Korea, and there are no conditions of emergency existent in the world at present.

Hence Communists and Communist sympathizers resident in this country are entitled to passports with the seal of the Government of the United States on them and are free to flaunt such a passport anywhere in the world!

Four members of the Supreme Court, on the other hand, say that "Were this a time of peace, there might very well be no problem for us to decide, since petitioners then would not need a passport to leave the country."

The five who think it is very important for an individual to travel where he pleases and do what he wishes abroad to denounce his own Government and its policies are Justices Douglas, Black, Brennan, Frankfurter and Chief Justice Warren. The inference is plain that the individual's pleasure and desires supersede the rights of the Government which represents the millions of other individuals who want their security protected.

"Travel abroad, like travel within the country," says the majority opinion, "may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values."

But the dissenting justices —Clark, Whittaker, Burton and Harlan—think that freedom to travel must be limited by the government that issues the passport and that in wartime or national emergency there is a risk that an individual traveling abroad may give aid and comfort to the enemy.

The five justices in the majority opinion declare that the Supreme Court in the past had decided that the movement of citizens could, of course, be restricted in wartime but that this was true only on a showing of "the gravest imminent danger to the public safety."

Who is the better judge of when the public safety is endangered? Five justices cloistered in the chambers of a court who seem to have become blind to the Communist menace and the infiltration of subversion practiced by agents of Communist imperialism in every country in the world, or the Department of State, which has available up-to-the-minute information from everywhere as to the dangers to the safety of the American people?

The majority of the justices flatly say that no condition of emergency exists at present, but the dissenting justices point out that the proclamation issued by President Truman in 1950 declaring an emergency is still in effect. His formal statement said that "World conquest by Communist imperialism is the goal of the forces of aggression that have been loosed upon the world" and that "The increasing menace of the forces of Communist aggression requires that the national defense of the United States be strengthened as speedily as possible."

The four dissenting justices sum it up in these words:

"In a wholly realistic sense there is no peace today, and there was no peace in 1952." This was the date when Congress and the President took action both believed was adequate to control the issuance of passports.

But the five justices constituting the majority have chosen to disregard what any Communist or Communist sympathizer or even a misguided person who isn't a Communist might do during his travels abroad that could embarrass the United States Government in the carrying out of its policies. There is no way, for instance, to watch citizens carefully who are doing damage to the United States.

This country has no right of surveillance abroad such as the FBI can exercise at home. The moment a passport is granted, a Communist sympathizer can have access to places abroad where it might be undesirable for the United States to have him go—as, for instance, to plot with or get instructions from agents of a foreign espionage apparatus.

The majority of the justices concede that Congress could pass a law specifically withholding passports under conditions arising out of war but not clearly defined as yet. Chairman Walter of the House Committee on Un-American Activities is already planning to introduce such a measure. There are, however, hints in the majority opinion that almost any measure to control the issuance of passports in "peacetime" may be struck down by the court.

Thus have the majority of the Supreme Court again thwarted the international policies of the United States Government in fighting communism. They have said, in effect, that Americans who go to Soviet Russia and make speeches there denouncing the United States cannot have their passports withdrawn. For all this apparently is part of "freedom of belief" and "freedom of association."

This is in line with previous decisions of the present Supreme Court, which has already upheld the right to preach treason as more important than the rights of millions of other Americans to be protected against the effects of treasonable activity inside and outside the United States.

Mr. Tolson
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
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Mr. Tamm
Mr. Trotter
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Mr. Holloman
Miss Gandy

New High Court Ruling Points Need for Curb

A RECENT book titled "Nine Men Against America" by Rosalie M. Gordon makes the serious charge that the present U.S. Supreme Court is dominated by a bloc of justices who are determinedly left-wing in their thinking and that they allow this attitude to color all their deliberations and decisions regardless of the facts or the law in the issues before them.

The book cites how, in case after case, the "liberal" hard core composed of Chief Justice Warren and Justices Douglas, Black and Brennan stand together—as a majority when they can persuade one other justice to join them, as a dissenting bloc when they are unable to do so.

Monday, the high bench added still another to its long string of controversial 5 to 4 decisions which seem to support the charge, when it held in two separate cases involving three men that the State Department has no authority to deny a passport to any citizen on a basis of his political beliefs and associations.

In this instance the "liberal" bloc succeeded in winning Justice Frankfurter to its point of view. Justices Clark, Burton, Harlan and Whittaker vigorously dissented.

The cases involved two men who refused to admit or deny Communist affiliation, past or present. A third denied such association but the State Department disapproved his passport application on grounds of secret information in its possession.

Monday's decision is extremely damaging from the standpoint of American security. It virtually destroys the ability of the federal government to control the free movement, in and out of the country, of either secret or avowed Communists who happen to hold American citizenship. And mobility of movement is perhaps the most important advantage a disloyal citizen can have in his subversive endeavors.

The decision adds still another to the long list of items, stemming from dubious decisions by a sharply-divided court, to which Congress should address itself.

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Robert H. Wolfe
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Today in National Affairs

Ruling on Passports Called Blow to National Policy

By DAVID LAWRENCE

WASHINGTON, June 17.—Five members of the Supreme Court of the United States have shut their eyes to the "cold war." In effect, they say there are no American troops stationed in Western Europe today, there are no American troops now guarding the armistice line every day in Korea, and there are no conditions of emergency existent in the world at present. Hence Communists and Communist sympathizers resident in this country are entitled to passports with the seal of the Government of the United States on them and are free to flaunt such a passport anywhere in the world!

Lawrence

Four members of the Supreme Court, on the other hand, say that "were this a time of peace, there might very well be no problem for us to decide, since petitioners then would not need a passport to leave the country."

The five justices who think it is very important for an individual to travel where he pleases and do what he wishes abroad to denounce his own government and its policies are Justice Douglas, Black, Brennan, Frankfurter and Chief Justice Warren. The inference is plain that the individual's pleasure and desires supersede the rights of the government which represents the millions of other individuals who want their security protected

Arguments Contrasted

"Travel abroad, like travel within the country," says the majority opinion, "may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values."

But the dissenting justices—Clark, Whittaker, Burton and Harlan—think that freedom to travel must be limited by the government that issues the passport and that in war time or national emergency there is a risk that an individual traveling abroad may give aid and comfort to the enemy.

The five justices in the majority opinion declare that the Supreme Court in the past had decided that the movement of citizens could, of course, be restricted in war-time but that this was true only on a showing of "the gravest imminent danger to the public safety."

Who is the better judge of when the public safety is endangered? Five justices cloistered in the chambers of the court who seem to have become blind to the Communist menace and the infiltration or subversion practiced by agents of Communist imperialism in every country in the world, or the Department of State which has available up-to-the-minute information from everywhere as to the dangers to the safety of the American people?

Truman Proclamation Cited

The majority of the justices flatly say that no condition of emergency exists at present but the dissenting justices point out that the proclamation issued by President Truman in 1950 declaring an emergency is still in effect. His formal statement said that "world conquest by Communist imperialism is the goal of the forces of aggression that have been loosed upon the world" and that "the increasing menace of the forces of Communist aggression requires that the national defense of the United States be strengthened as speedily as possible."

The four dissenting justices sum it up in these words:

"In a wholly realistic sense there is no peace today, and there was no peace in 1952." This was the date when Congress and the President took action both believed was adequate to control the issuance of passports.

But the five justices constituting the majority have chosen to disregard what any Communist or Communist sympathizer, or even a misguided person who isn't a Communist might do during his travels abroad that could embarrass the United States government in the carrying out of its policies. There is no way, for instance, to watch citizens carefully who are doing damage to the United States. This country has no right of surveillance abroad such as the F. B. I. can exercise at home. The moment a passport is granted, a Communist sympathizer can have access to places abroad where it might be undesirable for the United States to have him go—as, for instance, to plot with or get instructions from agents of a foreign espionage apparatus.

Sees U. S. Policy Thwarted

The majority of the justices concede that Congress could pass a law specifically withholding passports under conditions arising out of war but not clearly defined as yet. Chairman Walter of the House Committee on Un-American activities is already planning to introduce such a measure. There are, however, hints in the majority opinion that almost any measure to control the issuance of passports in "peacetime" may be struck down by the court.

Thus have the majority of the Supreme Court again thwarted the international policies of the United States government in fighting communism. They have said, in effect, that Americans who go to Soviet Russia and make speeches there denouncing the United States cannot have their passports withdrawn. For all this apparently is part of "freedom of belief" and "freedom of association." This is in line with previous decisions of the present Supreme Court, which has already upheld the right to preach treason as more important than the rights of millions of other Americans to be protected against the effects of treasonable activity inside and outside the United States.

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The Worker
New Leader

Date

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W. C. Sullivan

ADAMS AND FRIENDS

Manhattan: Ike's slips are showing. Now out comes Adams, and soon other stinks, Pinks and minks will show. Wait till some Sen. Williams exposes the waste and near-treason covered up in the $74 billion budget. Ike will go down as the greatest spendthrift in history. He and his Red-loving Supreme Court should be impeached. D. EDWARD.

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191 JUN 27 1958

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N. Y. Times
Daily Worker
The Worker
New Leader

Date

JUN 20 1958

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Supreme Court Once Again Comes To Aid Of Communists

The majority of the United States Supreme Court apparently do not know (or do not care) that we are in a life and death struggle with the evil forces of the International Communist Conspiracy stemming from the Kremlin.

Five members of the Supreme Court have held that the Secretary of State could not make regulations requiring a citizen to take an oath that he does not belong to a party which advocates the overthrow of our government by force, in order to qualify for a passport to travel abroad.

The decision specifically applies to Rockwell Kent, the artist, of Ausable Forks, N. Y.; Dr. Walter Biehl, a Los Angeles psychiatrist, and Weldon Bruce Dayton, a physicist of Corning, N. Y. It will presumably also enable Paul Robeson to get a passport, denied him on similar grounds.

The majority opinion was written by Justice William O. Douglas. Concurring were Chief Justice Earl Warren and Justices Hugo L. Black, Felix Frankfurter and William J. Brennan, Jr. Justice Douglas went to considerable length to differentiate between the power to refuse a passport in time of war and in time of peace. He held that there is no such danger now and the other four concurred.

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Mr. Mohr
Mr. Nichols
Mr. Parsons
Mr. Rosen
Mr. Tamm
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Miss Gandy

Newspaper: The Hopewell News
Hopewell, Va.
Date: June 24, 1958
Editor: A. ROBBINS, JR.
Author:
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Bureau

Shut Their Eyes

Apparently these five members of the Supreme Court have shut their eyes to the "cold war." Don't they know that we have American troops all over the world as a part of this "cold war"? Don't they know that American troops still patrol the Armistice Line in Korea? Don't they know that American troops are still in Western Europe and Berlin to prevent the Communist from gobbling up that area? Don't they know that American troops are poised to go into Lebanon, when invited to keep the Communists from taking over that country?

On the other hand four members of the court say that "were this a time of peace there might very well be no problem for us to decide since petitioners then would not need a passport to leave the country."

This dissent was written by Justice Tom C. Clark, who was joined by Justices Harold H. Burton, John Marchall Harlan and Charles Evans Whittaker. Justice Clark found the implication of Congress unmistakable, that the Secretary was to exercise the traditional passport function in such a manner as would effectively aid the protection of this country's security. Therefore he had a right to demand an affidavit as to connection with the Communist Party before issuing a passport.

Having knocked down many of our internal safeguards against the Communists, the Supreme Court now will allow these people to travel anywhere they wish, to denounce their own government, perhaps to meet Kremlin agents. The implication is plain that they think the individual's pleasure and desires supersede the rights of the government which represents all the millions of us who want our security protected.

Cannot Watch Them

Thus the majority chooses to disregard what any Communist or Communist sympathizer might do during his travels abroad that could embarrass the United States government in carrying out its policies. For there is no way to watch such travelers carefully. This country has no right of surveillance abroad such as the FBI can exercise at home.

The four dissenting justices stated that "in a wholly realistic sense there is no peace today and there was no peace in 1952." That was the date when Congress and the President took action both believed was adequate to control the issuance of passports.

The majority did concede that Congress could pass a law specifically withholding passports under conditions arising out of war but not clearly defined. Chairman Walter of the House Un-American Activities Committee is planning to introduce such a measure, but whether or not the Congress will get around to passing it is another matter. Certainly it should do so at once.

But, the Jenner-Burton Act which would undo some of the damage the Supreme Court has done to our control of Communist conspirators inside the country, and which has passed the Senate, is now stymied in the House. Perhaps this new attack on the right of our government to give us security against the International Communist conspiracy will really wake up the Congress. We hope so.

Even J. Edgar Hoover, respected head of the FBI, has denounced the Supreme Court for a long list of decisions which have greatly hampered the control of Communists in the United States. It would almost seem that the Supreme Court was working hand in glove with Moscow, so consistently have their decisions favored the Communists.

(U)

Supreme Court Abets Our 'Fellow Travelers'

Mississippi's Senator Eastland and other apprehensive leaders in Congress have been prompt to condemn the latest in an almost unbroken string of pro-Red decisions handed down by the U. S. Supreme Court — its June 16 ruling that the State Department cannot deny travel passports to Communist sympathizers.

The Court held that no existing statute authorized the Secretary of State to deny passports because of beliefs or associations" of the applicants. In effect, this ill-considered ruling permits subversives and fellow travelers to come and go at will. Senator Eastland suggests that the Suupureme Court has not only invaded the legislative field again but has also arrogated powers of the Executive Department.

Goaded by this dangerous ruling, Rep. Francis E. Walter has introduced legislation which would give the Secretary of State broad discretion in denying passports to alleged Communist sympathizers and persons whose foreign travels he thought would be prejudicial to the nation's best interests. The Walters bill directs that investigative files be used in passport cases and that the so-called "right to travel" should be reasonably limited as a matter of national security.

This bill or similar legislation should be enacted immediately, as a matter of common-sense caution. Certainly the State Department must have authority to withhold foreign travel privileges from known Communists, persons going abroad to support Red movements, persons under Communist Party domination and those who follow the party line.

Without such remedial legislation our enemies will be free to use the "right to travel" as a weapon which might eventually deprive us of our right to exist as a free nation.

Mr. Tolson
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
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THE CLARION-LEDGER
JACKSON, MISS.
Date 6-27-58
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Editor T. M. HEDERMAN, J

US SUPREME COURT DECISION

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167 JUL 15 1958

Almond Again Blasts U.S. Supreme Court

WHITE SULPHUR SPRINGS, W. VA., June 28 — "Tortuous and irrational" opinions of the Supreme Court are threatening to destroy constitutional government in the United States, Virginia's Governor Almond said here Saturday night.

The court's school desegregation decision of 1954 was only one instance of "judicial irresponsibility," Almond said in an address at a convention of Chi Omega fraternity.

Now, the Governor said, there is "grave concern that judicial legislation and judicial fiat are bringing about a philosophy of government which is the antithesis of that contemplated and framed by the great figures in our early constitutional history, and buttressed by judicial precedent woven into the fabric of the mores of our people."

Constitutional amendments reserving rights to the states "have been ignored, bypassed and all but expurgated" by Supreme Court decisions in recent years, Almond said. "If this trend is not reversed, the effects on our system of government will be far-reaching and could well be devastating," he said.

the Fourteenth Amendment as an excuse for philandering with the rights of the states, in the cloak of safeguarding the rights of the individual."

Almond pointed out that the last section of the amendment provides that "the Congress shall have power to enforce, by appropriate legislation, the provisions of this article." The Supreme Court desegregation decision "cannot be reconciled with this provision" of the amendment, he said.

"The Congress of the United States has never enacted any legislation that would [illegible] Fourteenth Amendment."

Richmond Times-Dispatch
Richmond, Virginia
June 29, 1958

VIRGINIUS DABNEY, Editor
JOHN H. COLBURN, Managing Editor

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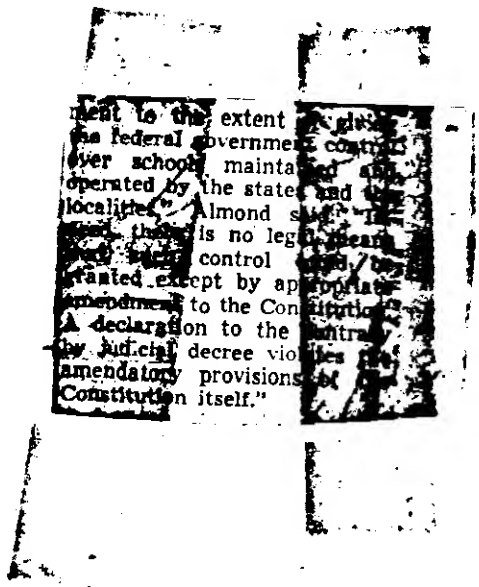

ment to the extent [illegible] the federal government control over schools maintained and operated by the states and localities." Almond said. "[illegible] there is no legal means [illegible] control [illegible] granted except by appropriate amendment to the Constitution. A declaration to the contrary by judicial decree violates the amendatory provisions of the Constitution itself."

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Today in National Affairs

Commissions' Kow-Towing To White House Ruled Out

By DAVID LAWRENCE

WASHINGTON, June 30.—The Supreme Court of the United States has just reaffirmed a principle of constitutional law that has a direct bearing on some aspects of the controversy over the Sherman Adams case. The principle is also related to the recent furor over influences exerted by members of Congress on the Federal Communications Commission, which awards licenses for television and radio.

Lawrence

It has been erroneously assumed in the last few weeks in some quarters that the White House exercises some sort of control over the tenure of members of the independent agencies, such as the Federal Trade Commission or the Securities and Exchange Commission. It has been charged by critics that a telephone call from the executive offices merely inquiring about a pending matter could cause a commissioner to tremble because he might be summarily removed.

But the Supreme Court today, in a unanimous opinion, says that, where Congress by law does not specify a cause for removal, the members of quasi-judicial commissions cannot be dismissed by the President and that they do not, therefore, hold office subject to his will.

Justice Frankfurther, who wrote the 9-to-0 opinion, went somewhat further than did the Supreme Court twenty-three years ago when it ruled that members of the independent commissions could be removed only for the causes specified by Congress. Justice Frankfurter's opinion of this week says that the members of these commissions cannot be removed by the President during their term of office even when Congress fails to specify any causes for removal.

President's Powers Studied

A President's power of removal had never in the history of the United States been the subject of any exhaustive study by the Supreme Court until Oct. 25, 1926, when it was held that the Chief Executive could remove a postmaster at will. From this, it was inferred thereafter that he could remove all other officials of the Federal agencies as well. Chief Justice Taft, who had himself been President, handed down the decision in the famous Myers case. He ruled, in effect, that a President has an inherent constitutional power of removal of all officials even when they have duties of a quasi-judicial character." This was supposed to flow from the President's power to see that "the laws be faithfully executed."

Then came the historic decision of May 27, 1935, when by 9 to 0 the Supreme Court Justices overruled President Franklin D. Roosevelt's dismissal of William E. Humphrey, a member of the Federal Trade Commission whose term had not then expired. Mr. Roosevelt said that Mr. Humphrey was all right except that his mind "did not go along" with the President's and he wanted a man of his own selection.

By the time the case was decided Mr. Humphrey had died, but his heirs had sued in the Court of Claims for back salary and this was awarded in the 1935 decision. The Supreme Court insisted that the Myers opinion of 1926 applied only to "all purely executive officers" and did not apply to members of quasi-judicial commissions like the Federal Trade Commission. The court expressly disapproved of the concept in the Myers case concerning a President's inherent constitutional power of removal.

Frankfurter Opinion

Thus, in this week's opinion, Justice Frankfurter says:

"Humphrey's case was a cause celebre—and not least in the halls of Congress. And what is the essence of the decision in Humphrey's case? It drew a sharp line of cleavage between officials who were part of the executive establishment and were thus removable by virtue of the President's constitutional powers, and those who are members of a body 'to exercise its judgment without the leave

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W. C. Sullivan

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New Leader

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or hindrance of any other official or any department of the government; as to whom a power of removal exists only if Congress may fairly be said to have conferred it.

"This sharp differentiation derives from the difference in functions between those who are part of the executive establishment and those whose tasks require absolute freedom from executive interference. 'For it is quite evident,' again to quote Humphrey's executor (case), 'that on who holds his office only during the pleasure of another, cannot be depended upon to maintain an attitude of independence against the latter's will.'"

The case before the court this week concerned Myron Wiener, a member of the War Claims Commission who was removed on Dec. 10, 1953, by President Eisenhower. Congress had not specified by law any grounds for removal of the commissioner but did say the commission was to "adjudicate according to law," and that the commission was to be "entirely free from the control or coercive influence, direct or indirect," of either the executive or Congress. Justice Frankfurter added:

"If, as one must take for granted, the War Claims Act precluded the President from influencing the commission in passing on a particular claim, a fortiori must it be inferred that Congress did not wish to have hang over the commission the Damocles' sword of removal by the President for no reason other than that he preferred to have on that commission men of his own choosing."

It has been argued that commissioners would nevertheless be subservient to executive pressure because they might desire reappointment and, once they incurred Presidential disapproval, there would be no extension of tenure. But this could apply also to the necessity for confirmation by members of the Senate. So, theoretically, Congress must not be antagonized either. If commissioners want to play politics, however, they can do so anyway, but over the years the members of the quasi-judicial commissions and boards have shown their independence. Many of the commissions have career personnel who serve indefinitely. They know the score. Scandals of improper pressure would be promptly exposed by them. The theory, therefore, that members of independent commissions must kow-tow to the White House to retain their posts now has been completely demolished by the Supreme Court's unanimous opinion today.

Mr. Tolson
Mr. Boardman
Mr. Belmont
Mr. Mohr
Mr. Nease
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. W.C.Sullivan
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Mr. Holloman
Miss Gandy

Letters to the Editor

High Court Passport Ruling

The recent Supreme Court decision ruling that a person cannot be denied a passport merely because of his beliefs has just given the Communists in this country another right along with many others, allowing them to carry out their work much faster. It seems that the Supreme Court is becoming more pro-Communist than anti-Communist in these decisions.

I cannot see how the Supreme Court trustees can say that they are protecting the right of the individual when they are helping to protect an organization whose aim is to take away those rights which the Supreme Court was founded to protect.

The FBI, which the Supreme Court has attacked frequently for being an unjust organization, has done more than the Supreme Court or anyone else in protecting the rights of the individual by trying to stop the spread of Communism in the United States.

It is a crime to plan, as well as commit a crime. Then shouldn't it be a crime to activate to overthrow the government (which the Communist Party teaches), as well as to do it? Those who don't think so are just helping to dig the grave of our country and the Communists will bury us with pleasure.

ROBERT C. WARD JR.

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LOS ANGELES HERALD-EXPRESS
JUL 8 1958

SUNSET Edition
Editorial
Letters to the
Editor Column

David W. Hurst —
Publisher
Herbert H. Krauch
Mgr. Editor

Re: Supreme Court Decision
on Passports
Info. Concerning

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Mallory Nullification

When the Supreme Court majority made its capricious "Mallory Decision," it placed a set of legal handcuffs on every law enforcement officer in the nation, including those of Federal agencies.

A nullifying bill sponsored by Louisiana's Representative EDWIN WILLIS has been passed by the House by a vote of 294 to 79 and the public safety requires that it be given equally swift and effective support in the Senate.

The "Mallory Decision," as much of a handicap to prosecutors as it is to investigators, got its name from the case of ANDREW R. MALLORY, a Negro rapist who had been convicted and sentenced to death for the assault on a Washington white woman. There was ample proof of his guilt but a Supreme Court majority threw out his conviction on the ground that police had held him too long between arrest and arraignment.

The court ruled that arrested persons must be arraigned "as quickly as possible" after arrest. It left no margin whatever for a usually necessary pre-arraignment investigation, a period in which a case can often be made" or lost.

The Willis Bill, which the House has approved, specifically sets out that statements and confessions, otherwise admissible, shall not be inadmissible solely because of delay in taking an arrested person before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States."

It protects the rights of the accused by requiring that interrogating officers warn him in advance that any statement made by him can be used as evidence against him. Statements made without such a warning having been given are to be held inadmissible as evidence.

The Jencks and Mallory decisions have done more injury to public safety than any other two in the long history of Federal jurisprudence. The Jencks decision provided a means for criminals to have a look at the FBI's confidential files. It opened a prison door for many. The Mallory decision prevents the door from ever being closed on some.

The Willis Bill will restore some strength to a law enforcement arm withered by judicial unreality and ultra liberalism.

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THE COMMERICAL APPEAL
MEMPHIS, TENNESSEE
7-8-58

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Loyalty Oath Ruling

The United States Supreme Court caused another shock when it decided that the California non-Communist oath required of religious groups and veterans seeking state tax exemptions is unconstitutional.

Thus was toppled another barrier set up by those who felt they were trying to stem the progress of domestic Communism in this country.

Justice Brennan stated that it was not proper that the individual or organization applying for the tax exemption bear the burden of proof that he is not a person or organization advocating the overthrow of the government.

But Justice Clark in opposition said:

"I cannot agree that due process requires California to bear the burden of proof under the circumstances of this case. This is not a criminal proceeding. Neither fine nor imprisonment is involved.

"Appellants are free to speak as they wish, to advocate what they will. If they advocate the violent and forceful overthrow of the California government, California will take no action against them under the tax provisions here in question.

"But it will refuse to take any action for them, in the sense of extending to them the legislative largesse that is inherent in the granting of any tax exemption or deduction."

And Los Angeles County Counsel Harold W. Kennedy declared:

"As a public law officer, I firmly believe it is the purpose of the Constitution to preserve the government and not to serve as a protective shield for those who, while claiming privileges under the Constitution, would seek to destroy it."

More and more, it would seem to us, the way is being paved toward that day when it will be just nobody's business who and how many people are American Communists, no matter how harmful or threatening their activities.

Mr. Tolson
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LOS ANGELES HERALD-EXPRE
JUL 8 1958
SUNSET Edition
EDITORIAL
LEWIS S. YOUNG
EDITOR

DAVID W. HURST—
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It's the Law

Several years ago the Court of Appeals, in the Durham case, broadened the definition of insanity as a defense in criminal cases. The court said that a person could not be held guilty of a crime if, at the time of the offense, he was suffering from a mental disease or defect, and if this caused him to commit the crime. One result was some confusion as to the circumstances under which a person found not guilty by reason of insanity should be turned loose or committed to St. Elizabeths Hospital.

This was settled when Congress stepped into the picture and provided by statute that such a person must be committed to St. Elizabeths and held there until such time as he has regained his sanity and the doctors are prepared to certify that he will not be dangerous to himself or others in the foreseeable future. In other words, Congress acted to prevent the premature release of defendants who had been acquitted on insanity grounds.

In its recent decision in the case of Paul D. Leach, the Court of Appeals merely applied the plain intent and purpose of the statute. Leach had been diagnosed as suffering from a sociopathic personality, and this is a fuzzy area. The gist of the medical testimony in his case was that a sociopath suffers from a mental disorder but is not necessarily insane. The doctors agreed, however, that Leach was dangerous, and on this basis the appellate court, overruling the lower court, said that he must be sent to the hospital and held there until the doctors make the certification required by the law.

One salutary effect of this ruling should be to discourage the use of insanity pleas in the hope of "beating the rap." We hope this will prove to be the case.

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Suspect Cleared on Insanity Ruling Is Allowed to Go Free by Judge Beard

Municipal Court Judge Edward Beard acquitted a criminal suspect by reason of insanity yesterday and ordered his release from custody.

Dr. Winfred Overholser, superintendent of St. Elizabeths Hospital, said it is the first such release of which he has heard since passage of a 1955 law requiring that a person acquitted by reason of insanity be sent to a mental institution. Under the law, such persons are held at the hospital until the superintendent notifies the Court that the individual no longer is considered dangerous to himself or to others. The hospital recommends release of the person and there is a judicial determination at that time.

Beard acted in the case of Clayton Morgan Jr., 40, who had been accused of taking property without right when he took a joy ride on Pennsylvania ave. se. aboard a D. C. Transit System streetcar last October.

Assistant United States Attorney Edmond Daly went to Beard's chambers late yesterday with a motion that the Judge hold up the release of Morgan and issue an attachment so that Morgan could be taken to St. Elizabeth's. He had been freed earlier in the day.

Beard denied the motion and Daly said United States Attorney Oliver Gasch sent the matter to his appellate section with instructions that it be carried to the Municipal Court of Appeals as soon as possible. Daly said the appeal might be taken today.

According to Daly the United States Attorney's office takes the position that the 1955 statute should be strictly conformed with.

Beard told reporters after the trial that he acted on the basis of psychiatric reports that Morgan was without mental illness.

Furthermore, Beard said, there is nothing in Morgan's background records indicating he would be dangerous to himself or to the community if released.

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Dangers Exist In Mallory Bill, Carroll Warns

Fears Lowering of Standards Of Federal Law Enforcement

By Elsie Carper
Staff Reporter

Legislation modifying the Supreme Court's Mallory decision would give Federal law enforcement officers new powers and lower Federal standards, Sen. John A. Carroll (D-Colo.), said yesterday.

The FBI, the Secret Service, and agencies dealing with violations of interstate commerce laws would be able to use "the dragnet" in making arrests without probable cause, he said.

Carroll, a member of a Senate Judiciary subcommittee holding hearings on Mallory legislation, noted that the recently approved House bill cleared without any discussion of "the basic principle of the extension of Federal police powers."

Conviction Reversed

Andrew R. Mallory confessed to rape during a 7½-hour questioning before he was arraigned. The Supreme Court reversed his conviction on the grounds of unnecessary delay in his arraignment.

The House bill provides that in a Federal jurisdiction a police confession "otherwise admissible" shall not be excluded from evidence "solely" because of a delay in arraignment. It also requires police to tell an arrested suspect before questioning that anything he says can be used against him.

Carroll, a former prosecutor, said that local police departments "by tradition and practice" have used arrests as a means of investigating crimes of murder, robbery, rape, and similar "common law" offenses. He added that defendants held for investigation are on suspicion while they are questioned.

"We have always demanded higher standards for Federal police," the Senator said.

Preparing Amendment

Carroll added that he was preparing an amendment to the House bill to limit its application only to the District of Columbia. Since the area is a Federal territory, procedures in major crimes fall under Federal statutes.

He said he did not see how a city police department could operate under the Mallory Decision but that the same powers should not be given Federal law enforcement officers.

Witnesses appearing before the subcommittee expressed widely divergent views on whether Congress should enact the legislation. After nearly six hours of listening to testimony, subcommittee Chairman Joseph O'Mahoney (D-Wyo.) adjourned the hearings to a date to be set in the future.

Sen. Joseph S. Clark (D-Pa.) one of the witnesses, described the House bill as "poorly drawn legislation" that throws doubt on rules 5A of the Federal Rules of Criminal Procedure. The rule directs an arresting officer to take a defendant before an arraigning magistrate without unnecessary delay.

Clark Irks Butler

Clark declared that the atmosphere of Congress prevents the "judicial determination of a narrow point of law."

Stung by Clark's remark, Sen. John Marshall Butler (R-Md.), one of the chief backers of the legislation, asked if Clark was saying that the Senate is incompetent to amend its own statutes and rules.

"You and I disagree so violently that a colloquy before the Subcommittee will shed more heat than light" the Pennsylvania Democrat replied.

Clark said Congress is "monkeying with a buzz saw" by acting without a recommendation from the Attorney General.

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WILLIAM S. WHITE

Brethren Have Time on Their Side

High Court Justices Have No Power Except the Greatest Power of All

(Fifth in a once-a-week series of sketches of the six faces of official Washington.)

The home of The Brethren is a great blazingly white temple across which, etched in stone, is this motto: Equal Justice Under Law.

The Brethren are the nine Justices of the Supreme Court, the world's most influential tribunal and the only one of its kind. This independent branch of the Government of the United States is at once the most majestic and the least aggressive of all the six faces of official Washington.

This court is guardian of the Constitution. It asserts — and sometimes actually uses — the right to veto the acts of a Congress or a President as unconstitutional. But it has no military force at its command, as does the President; no hold over the national purse, as does Congress. In fact the Court has really no power whatever to enforce what it says — no power except the greatest power of all. This is a peculiar moral force arising from the long Anglo-American tradition for playing the game as the rules provide, or as they may be authoritatively interpreted.

This national sense of decency has thus far, for nearly two centuries, been more persuasive than dive bombers.

The present Court is like a slice of the country. The Chief Justice, Earl Warren, is a big hail-fellow as breezy as his native California—and a little inclined, in the view of some critics, to be too cheerfully quick and Western in settling some cases of old and infinite complication.

The senior member of the Court in service, Hugo Black of Alabama, is as withdrawn as Warren is outgoing—thin-faced, ascetic, with something of the worn, rubbed look of an old and much-used law book.

The urban, intellectual East is typified by Justice Felix Frankfurter of Massachusetts, who is spry, witty, wiry and full of the joy of life. For years Frankfurter, a Franklin Roosevelt appointee, was looked upon with great fear by the ultra-conservatives.

He was pictured as the head and master of a classroom radicalism that was training its junior officers in the Harvard Law School for the sole purpose of joining Field Marshal Frankfurter in an ultimate assault upon every Union League club and management group in this Nation.

The Court has long memories of many ironies. A present irony is that Frankfurter, no doubt with some wry private thoughts, has become something of a hero to the legal conservatives. For the Court of 1958— in a most polite and fair-minded way—is fundamentally divided along what might roughly be called conservative and liberal lines.

And Frankfurter sometimes is actually the chief of the conservative group. Generally speaking, he takes a rather traditional and reserved view of the proper role of the Court. He does not gladly challenge congressional acts — though many in Congress have very often challenged his acts.

The so-called liberal faction is headed by Black and Warren, with Justice William O. Douglas in their company and Justice William J. Brennan, Jr., sometimes—but not always—with them.

The hard-core conservatives are Justices Harold H. Burton, Tom C. Clark and Charles E. Whittaker.

The two Justices who are perhaps the Court's outstanding Constitutional authorities, Frankfurter and John Marshall Harlan, form a generally uncommitted third force. On the whole, however, they are more likely to come down on the side of restraint than of innovation in questions of the Court's proper powers.

Through history the Court has been under intermittent attack. Franklin D. Roosevelt tried to pack it for being too conservative on economic issues. And where 20 years ago the advanced liberals were after the Court, the ultra-conservatives are after it today.

The Court that was too illiberal two decades ago is now, in the eyes of the right wing, far too liberal—mainly because of its anti-segregation decision and its various rulings restricting Government action against Communists or suspected Communists.

The Brethren well know all this history. They are not, however, greatly disturbed. Time is long upon the High Bench, and all things pass away. Come next October, upon reconvening from the summer recess, the nine black-robed men will file in at noon. The Crier will call out, "God save the United States and this Honorable Court!" And the long march of justice will go serenely on.

U. S. News & World Report

COMMUNISM AND SUPREME COURT —A GROWING DEBATE

Pro and Con by Senator Eastland and Senator Morse

The argument over the Supreme Court broke out on the Senate floor last week.

It started with an attack on the Court by Senator James O. Eastland (Dem.), of Mississippi, chairman of the Senate Judiciary Committee.

Senator Eastland added up the records of Court Justices on all cases involving Communism and reached the conclusion that some Justices consistently favor the Reds. He urged congressional action to curb the Court.

In reply, Senator Wayne Morse (Dem.), of Oregon, defended the Supreme Court. He said it is preserving the basic rights of Americans.

Following are excerpts from a speech to the Senate by Senator James O. Eastland (Dem.), of Mississippi, July 10, 1958:

Mr. President, the most graphic and effective way to illustrate and portray the remarkable change and development that has taken place on the part of the Supreme Court in its attitude toward Communism, the Communist Party, and matters involving subversive and seditious activities is by way of a detailed study and analysis of all Supreme Court decisions involving these matters.

The Court is a composite of nine individual judges. Thus, it is the attitude and position of each judge as an individual that is of critical and crucial importance.

For the purpose of clarity and simplicity the tables, charts, and tabulations divide the positions and attitudes of the judges into those of pro-Communist or anti-Communist. When an opinion or vote coincided with the position taken by the litigant and was against the government, either State or national, and which decision favored the Communists or furthered the interest of or benefited the Communist Party generally and weakened the internal security of the nation and the ability of the United States or the States to cope with Communist conspiracy or subversion, it is entered as "pro"—meaning pro-Communist. The negative position is designated by "con"—contrary or anti-Communist.

Mr. President, since 1919 through Monday, June 2, 1958, the United States Supreme Court rendered 84 decisions involving Communist or subversive activities in cases where the position of the individual judge could be determined.

In 24 years, 1919 to 1942, the Court decided only 11 cases in this category. Of these 11 cases, the first seven were decided against the Communist position and in favor of the Government.

Since 1943, seventy-three cases involving Communism or subversion have been decided where the position of the individual judge could be ascertained. . . .

• • •

From 1943 through 1953, a total of 34 cases in these categories was considered. A majority of the Court voted in favor of the position advocated by the Communists in 15 cases and held contrary to what the Communists wanted in 19 cases.

Earl Warren took the oath of office as Chief Justice in October, 1953. In the 4½ years since he has been Chief Justice, the Court has consented to hear a fantastic total of 39 cases involving Communist or subversive activities in one form or another. Thirty of these decisions have sustained the position advocated by the Communists and only nine have been to the contrary.

—USN&WR Photo

SENATOR EASTLAND

Even more significant than the overall result of these decisions is an analysis of the votes and positions taken by the individual judges. This is from the tabulation previously introduced in the "Record" which starts with the year 1943.

Hugo Black participated in a total of 71 cases and his batting average is an even 1.000. Seventy-one times he voted to sustain the position advocated by the Communists, and not one vote or one case did he decide to the contrary.

Justice William Douglas participated in 69 cases. His batting average is slightly lower than Black's. Pro-Communist votes—66, anti-Communist—3.

It is hard for me to believe, Mr. President, that the Government, or the States, the Department of Justice and the Federal Bureau of Investigation, the congressional committees and the district courts and circuit courts of appeal were always wrong.

Felix Frankfurter is the third mem-

. . . Eastland: "Curb this Court, restore balance of powers"

ber of the Court who has served continuously throughout this period. He participated in 72 cases and his record shows: pro-Communist votes—56, anti-Communist—16.

Tom Clark was appointed to the Court in 1949. He is the last member now on the Court of a group composed of Clark, Reed, and Minton who were consistently anti-Communist. This is their record:

	Pro-Communist Votes	Anti-Communist Votes
Clark	18	33
Reed	14	40
Burton	32	37
Minton	10	35

Burton is included above with his record of 32-37; he was more often with than against the strong anti-Communist judges.

Here are the records of the remaining members of the presently constituted Court:

	Pro-Communist Votes	Anti-Communist Votes
Warren	36	3
Harlan	20	14
Brennan	18	2
Whittaker	4	7

Mr. President, I have here presented an over-all picture based entirely on a statistical analysis. I do not argue that a judge was always wrong in each and every individual decision that might have a result favorable to the Communist position. What concerns me and is of vast concern to the American people is the pattern that has been developed and made clear by these facts and figures.

Also, since the great number of cases considered in the categories that I have here discussed arise by virtue of writs of certiorari where the Court affirmatively decides what it shall consider and what it shall not consider, the startling increase in the number of decisions that favor the position of the Communists can be justifiably held to be most significant.

Even more important than the high proportion of cases which have been decided favorably to the Communist contention is the fact that increasingly, under Chief Justice Warren's regime, the Court has been expanding its usurpation of the legislative field and purporting to make new law of general application which will be favorable to the Communist position not only in the individual cases decided but in innumerable other cases.

The one area where there seems to be some predictability with respect to the Warren Court's action is where cases involve the interests of the world Communist conspiracy and its arm in this country, the Communist Party, U.S.A.

When delay is necessary to help the Communist cause, the Court delays. . . .

The long-range intentions of the Supreme Court are obscure, as its language in some of these cases also has been. Perhaps we cannot say what the Court is trying to do, but we can see what it is doing: It is moving, step by step, paragraph by paragraph and decision by decision, toward establishment of the Communist conspiracy in the United States as a legal political entity, with just as much right to exist and operate as any political party composed of decent, patriotic American citizens.

When suppression would help the Communist cause, the Court has suppressed. . . .

When pre-emption would help the Communist cause, the Court has pre-empted. . . .

When invention would help the Communist cause, the Court has invented. . . .

When misstatement would help the Communist cause, the Court has misstated. . . .

. . .

How many more of these decisions must we take between the eyes, Mr. President, before we admit that blows are being struck? How many more times must the Court demonstrate apparent fondness for the Communist cause, before we admit the possibility of the existence of such fondness? When do we begin to act in discharge of our responsibility to the people of the United States, and to the sovereign States we represent, to curb this Court and restore the balance of powers which is a basic requirement for the proper functioning, even for the ultimate survival, of our form of government? . . .

Morse: Attack on the Court Is "The Most Dangerous Subversion"

Senator Wayne Morse (Dem.), of Oregon, responded to Senator Eastland's speech, which he described as "one of the most serious attacks on the judicial process under the Constitution of the United States I have ever heard." Excerpts from the response, as released by Senator Morse's office on July 10:

To make a statistical analysis of the decisions of individual members of the United States Supreme Court as they have applied the Constitution in accordance with their judicial trust, and then jump to the conclusion that, in protecting individual rights, in protecting the great civil rights guaranteed by the Constitution, they turn themselves into pro-Communist judges, in my judgment is such a travesty upon the principles of logic that I am aghast that I sat in the Senate and heard such *non sequitur*, fallacious reasoning presented on this floor.

Thank God for a Supreme Court which has the courage, in hours of hysteria, to hold true to the basic rights of freedom guaranteed each citizen by the Constitution of the United States, without which rights we would not be in this chamber this afternoon as free men. . . .

It is the duty of the courts of the United States never to allow political winds, political considerations, public hysteria or public bias to enter into the decision of such courts in applying the law to the facts of a case.

It is pretty sad—and I say this with a full understanding of the meaning of the sentence I now utter—that any attempt should be made to tear down the United States Supreme Court and its prestige before the American people. That is the most dangerous subversion that could be let loose in America. . . .

I categorically deny, as a lawyer, that there is any justification, on the basis of the record of the present bench of the Supreme Court, for such a sinister attack upon those great public servants as I have heard this afternoon. Again I say, thank God for the courts.

With a prayer on my lips I say: Let us always hope that that Court will continue to sit there unsullied and unafraid. If there are those in this country who wish to take away from that Court the duty to protect the rights of American citizens under the Constitution, let them propose a constitutional amendment to do so, and see how much support they get in America. [END]

0-16 (Rev. 10-29-57)

Undermining the Court

With our foreign affairs in a mess and 5 to 6 million people out of work, a substantial part of the Senate seems determined to escape from these harsh realities by luxuriating in attacks upon the Supreme Court. If these attacks are not to result in anti-Supreme Court legislation, some Senators better speak up on behalf of the Court before it's too late.

Not for a long time have there been as many bills to reverse decisions of the Supreme Court as are pending right now—bills to reverse the *Mallory* decision (preventing the use in evidence of illegally obtained confessions), the Cole decision (limiting the Federal security program to sensitive jobs), the *Kent* decision (protecting the right to a passport), the *Nelson* decision (keeping the states out of the "subversive" field).

In addition, there are also bills to prevent Federal courts from reviewing state criminal trials on petition for *habeas corpus*, to reverse a century or more of Supreme Court decisions on Federal-state relations, and finally the Butler-Jenner bill to reverse wholesale the pro-civil liberties decisions of the Supreme Court.

We in Americans for Democratic Action hold strongly to the view that recent Supreme Court decisions have reaffirmed the letter and spirit of the Bill of Rights and have strengthened the processes of our democracy in its life-and-death struggle against communism. The Supreme Court is once again playing its historic role as the balance wheel in our constitutional system; at the very time that the Executive and Legislative branches of our Government are putting primary emphasis on security at all costs, the Court is protecting our great traditions of civil liberty which will always be the ultimate guardian of our security.

Much impetus for reversing these Supreme Court decisions comes from those who oppose the Court's action in safeguarding the rights of our Negro citizens. Impetus also comes from those who are unwilling to accept the great principles of the Bill of Rights when it conflicts with some immediate political or legislative objective of their own.

The battle cry of both camps is "reverse the Court" and it does not seem to make much difference what is reversed. We do not believe that either group reflects the will of the American people, and we urge those Senators who believe deeply in the Bill of Rights to turn this attack on the Court into a great debate on the historic role of the Supreme Court in the protection of American liberties.

One would have thought that Congress, instead of attacking the Supreme Court, would pin a medal on it. When Congress was in a straitjacket on the segregation issue because of the veto power of its Southern minority, the Court rescued our national integrity with its historic decisions against segregation.

When Congress was unable, because of the seeming political consequences in "softness toward communism," to resist legislation and investigation in derogation of traditional constitutional rights, the Court stepped in to safeguard those rights. It is ironic that a Congress so in debt to the Court should repay it by attack.

The bills with the greatest chance of enactment are S. 654 (to reverse the *Nelson* decision), S. 1411 (to reverse the *Cole* decision), H. R. 11477 (to reverse the *Mallory* decision), and H. R. 8361 (to reverse the long standing practice of Federal judicial review of state criminal trials by *habeas corpus*).

There is no emergency that warrants action in any of these fields in the closing days of Congress when full debate is impossible. The *Nelson* and *Cole* decisions are over two years old and *Mallory* over a year old. Nothing has happened in the interim that demands hasty action in any of these areas. If Congress has time for an intrusion into the field of the Bill of Rights, it would do far better to consider pending civil rights legislation to implement the Supreme Court's decisions outlawing segregation.

JOSEPH L. RAUH JR.
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Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Dail, Worker
The Worker
New Leader

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CURBING THE COURT

BY RAYMOND MOLEY

By a decisive vote, in which the conservative Republican - southern Democratic coalition prevailed, the House of Representatives recently passed a bill limiting the power of the Supreme Court to strike down State laws under what is called the doctrine of pre-emption.

This bill, with some changes, has been approved by the Senate Judiciary Committee and should reach the Senate floor in the final days of this session. Some such legislation has been urged ever since the Supreme Court, in a series of decisions two years ago, reached far into the field of legislation and seriously impaired the constitutional powers of the States to protect their interests, notably in the fields of antisubversive activities.

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The terms of the House bill (HR 3) are simple. Its first section provides that "no act of Congress shall be construed as indicating an intent on the part of Congress to occupy the field in which such act operates, to the exclusion of all State laws on the same subject matter, unless such act contains an express provision to that effect, or unless there is a direct and positive conflict between such act and a State law so that the two cannot be reconciled or consistently stand together."

Then, apparently to nail down specifically the right of the States on the subject of sedition, a further provision is added on that subject.

Wash. Post and Times Herald
Wash. News
Wash. Star
N. Y. Herald Tribune
N. Y. Journal-American
N. Y. Mirror
N. Y. Daily News
N. Y. Times
Daily Worker
The Worker
New Leader
L.A. Times 5

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The Senate Judiciary Committee's bill as approved limited itself to the latter section of the House bill, but the chairman asserted that members of the committee might offer the more sweeping provision of the House bill in the shape of an amendment on the Senate floor.

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Since the Supreme Court went far beyond State laws on sedition in its wholesale emasculation of the powers of States, it would seem the better part of wisdom for the Senate to make the terms of the curb general. For under the impetus of the almost fanatical zeal of a majority of this court to limit the powers of the States and to extend Federal power, no one can know where it will strike next. To provide in every act of Congress that Federal preemption shall not apply would seem to be a cumbersome way of putting into effect a power clearly within the jurisdiction of Congress. The Constitution clearly gives Congress power to define within certain limits the jurisdiction of the Supreme Court, and it specifically provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Since the amazing invasion of the rights and authority of the States began five years ago, innumerable lawyers whose capacity is just as great as that of any of the present members of the court, and much, much greater than that of some members, have condemned the reckless course of decisions in the Nelson case especially, the term "jail delivery" was quite generally used.

A far greater jurist than any of those now sitting, Chief Justice Harlan F. Stone, said of this theory of pre-emption, now asserted by the court, in a case in 1942:

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"Due regard for the maintenance of our dual system of government demands that the court do not diminish State power by extravagant inferences regarding what Congress might have intended if it had considered the matter, or by reference to their own conceptions of a policy which Congress has not expressed and is not plainly to be inferred from the legislation which it has enacted."

It is a bit difficult for the layman to understand the reasoning of a court which interpreted a Federal law on sedition as having excluded the States from legislating on the subject when the original sponsor of that Federal legislation is still alive, and able to tell what was in his mind and what he knows to have been in the minds of his colleagues when they voted for it. But that is the precise situation now, and fortunately that sponsor, Rep. Howard W. Smith of Virginia, is mostly responsible for the salutary curb of the presumptuous court which is now before the Senate.

No reference is made to the Director or FBI.

Department of Justice

Mr. Tolson
Mr. Boardman
Mr. Nease
Mr. Parsons
Mr. Rosen
Mr. Tamm
Mr. Trotter
Mr. W.C.Sullivan
Tele. Room
Mr. Holloman
Miss Gandy

FOR IMMEDIATE RELEASE
MONDAY, AUGUST 18, 1958

The Department of Justice made public today the following letter stating its position on several legislative measures pending in Congress:

August 18, 1958

Honorable James O. Eastland
Chairman, Committee on the Judiciary
United States Senate
Washington, D. C.

Dear Senator:

I understand that the Senate will soon consider various bills dealing with recent Supreme Court decisions. It may be helpful, therefore, if the views of the Department of Justice on these measures, are restated at this time.

Some of this legislation permits of full and unencumbered consideration and discussion of a concrete question and these bills are not opposed by the Department. Thus, H. R. 13272, a bill now on the Senate Calendar "To amend section 2385, title 18, United States Code, to define the term 'organize' as used in that section," is directed to one facet of the Supreme Court decision in Yates v. United States, 354 U. S. 298. In that case the Supreme Court held that Congress intended that the term "organize" as used in the Smith Act does not include such activities as the recruiting of members, the organizing of clubs within the framework of the Communist Party, etc. This bill would redefine "organize" in unmistakable terms. It would constitute a clear statement of Congressional intent in a single field and so we support this bill.

Another measure which has the virtue of attempting to meet only one problem, thereby avoiding the possibilities of varied, unanticipated, and undesirable consequences, is H. R. 11477, a bill "To amend chapter 223 of title 18, United States Code, to provide for the admission of certain evidence, and for other purposes."

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It is directed to the law enforcement problem raised by the Supreme Court decision in Mallory v. United States, 354 U.S. 448. Its scope is narrow. It is aimed at one legal problem. Its effect may be anticipated. In the Mallory case, the court ruled inadmissible a confession made during a delay between arrest and arraignment which the court considered to be unnecessary. The bill would provide that evidence, including statements and confessions, otherwise admissible, would not be inadmissible solely because of reasonable delay in taking an arrested person before a commissioner or other officer empowered to commit persons charged with offenses against the laws of the United States. We have no objection to the enactment of this bill.

A third measure which is likely to be placed before the Senate would amend Title 18 of the United States Code to authorize the enforcement of State statutes prescribing criminal penalties for subversive activities. This legislation is directed at the effects of a specific court decision, Pennsylvania v. Nelson, 350 U.S. 497. It provides that certain Federal statutes prescribing criminal penalties for subversion or sedition against the United States or any state shall not prevent the enforcement in a state court of a state statute prescribing penalties for such activities. In the Nelson case the Supreme Court held that a conviction under the Pennsylvania law of sedition against the United States could not be sustained because the Federal statute (Smith Act, 18 U.S.C. 2385) had pre-empted this field of seditious activity. S.654 overcomes the effect of the Nelson case by specifically providing that Congress does not intend to pre-empt the field to the exclusion of state law in this area of subversion and sedition. We supported similar legislation in the last Congress (S. 3617) and reiterate that support now.

Another bill important to state-federal relationship although not to any recent Supreme Court opinion and which I have been informed will be considered is H. R. 8361, a bill "To amend section 2254 of title 28 of the United States Code in reference to applications for writs of habeas corpus by persons in custody pursuant to the judgment of a state court."

Section 2254 of title 28 of the United States Code now provides that no application for a writ of habeas corpus in behalf of a person in custody pursuant to a State court judgment shall be granted unless it appears that the applicant has exhausted the remedies available in the State courts or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner. It also provides that an applicant shall not be deemed to have exhausted the remedies available in the State courts if he has the right under the law of the State to raise the question presented.

H. R. 8361 would add to the foregoing the proviso that application for a writ of habeas corpus may be entertained only if a substantial federal constitutional question is presented which was not theretofore raised and determined, which there was no fair and adequate opportunity theretofore to raise and have determined, and which cannot thereafter be raised and

determined in the state court by an order or judgment subject to review by the Supreme Court of the United States on writ of certiorari. The bill would also limit review of an order denying an application for a writ of habeas corpus to a petition for a writ of certiorari in the Supreme Court which must be filed within thirty days after the entry of such order.

This bill has been supported by the Department of Justice which has joined with the Judicial Conference of the United States, the Conference of Chief Justices and the Association of State Attorneys General in urging its enactments.

Although the department supports these four measures there is one which it earnestly opposes - H. R. 3 which, although not reported by the Judiciary Committee, will probably be offered as an amendment to S. 337 which has been reported. H. R. 3 is designed to revive certain state laws previously held unconstitutional because of their conflict with federal statutes. It proposes to change the effect of these federal statutes, not by openly amending them but by passing a retroactive rule of interpretation to change the meaning the courts have given to the words now contained in these statutes without changing the words themselves. The bill is so broadly drawn that its effect can not be foretold and if it is effective, it must change the meaning of statutes conclusively interpreted many years ago, basic statutes under which millions of dollars have been invested and under which important human relationships have become fixed.

Section 1 reads as follows:

> "No Act of Congress shall be construed as indicating an intent on the part of Congress to occupy the field in which such Act operates, to the exclusion of all State laws on the same subject matter, unless such Act contains an express provision to that effect, or unless there is a direct and positive conflict between such Act and a State law so that the two cannot be reconciled or consistently stand together."

This section would attempt to apply a new rule for determining the intent of not only the present Congress or of a future Congress, but also previous Congresses whose intent is a long concluded fact not subject to change by legislative fiat. It would provide that there was no intent to occupy a field to the exclusion of State laws unless the federal statute contains an "express provision" to that effect or unless there is a "direct and positive conflict" so that they cannot consistently stand together.

There are relatively few federal statutes containing express provisions preempting the field. Major laws relating to interstate enterprises, and others in fields of heretofore undoubted federal pre-eminence, such as bankruptcy and immigration, contain no such provisions. In these fields there is serious question as to the effect of Section 1 upon heretofore existing court rules of interpretation - whether there is any difference

between the "direct and positive" conflict test contained in the bill, and that which the courts have heretofore applied.

There were declarations by Congressmen favoring the bill in Committee and on the floor of the House that the first section of H. R. 3 is merely declaratory of existing law. Ordinarily, Congress should not be called upon to perform a useless act, especially when it would give rise to great uncertainty in so many vital areas of Federal-State relations. Some proponents of this measure believe that it will change existing law. Indeed Congressman Howard W. Smith, who introduced the bill, testified before the House Judiciary Committee that he had no interest in the bill unless it was made retroactive.

If it would change the law, then innumerable questions arise as to how far and in what fields changes in the law are intended to be wrought. These changes in a multitude of Federal-State relationships will be uncertain in extent and meaning until the courts have passed on the numerous questions raised.

The principal area in which Federal legislation comes into conflict with State legislation covering the same field is that in which the commerce power is exercised. There are, of course, many other fields in which problems of concurrent jurisdiction arise; control of aliens by requirement of registration, Hines v. Davidowitz, 312 U.S. 52; authority over immigration, Takahashi v. Fish & Game Commission, 334 U.S. 410; labor-management relations, Garner v. Teamsters, Chauffeurs, etc. Union, 346 U.S. 485.

For the farmer and the businessman in interstate commerce H. R. 3 creates the serious possibility of multiple and different regulations by 49 jurisdictions. A striking but typical example is given by the Vice President and General Counsel of the Association of American Railroads:

> "Enactment of H. R. 3 without language excepting its application to carriers subject to part 1 of the Interstate Commerce Act such as railroads would create chaos in the field of Federal regulation of the railroads. For example, in areas now pre-empted by Federal legislation such as: (1) rates, H. R. 3 might lead to establishment of multitudinous rates on a single commodity depending upon the action of State courts and juries as to a reasonable rate; (2) penalties, many antiquated State laws are in existence and would have application to interstate rail transportation service if H. R. 3 were enacted, including nullifying car service orders of the Interstate Commerce Commission; (3) safety appliances and free interchange of rolling stock among railroads in this country, H. R. 3 would permit the substitution for Federal law of innumerable and conflicting State statutes requiring particular safety devices on railroad rolling stock; (4) locomotive inspections, conflicting State laws might be given full application with

resulting intolerable operation conditions; (5) hours of service, the diversity of State employment laws is a matter of common knowledge and enactment of H. R. 3 would lead to untold complications and additional expense in complying therewith as compared to existing Federal law. Cannot overemphasize the undersirable nature of and chaotic condition that would be created in the field of interstate railroad transportation by enactment of H. R. 3 without language excepting its application in instances of railroads subject to the Interstate Commerce Act."

Similarly, farmers and marketers of agricultural produce complying with the Federal Food, Drug and Cosmetic Act might be subject to prosecution under numerous state laws which set up different and varying standards for compliance. (See Savage v. Jones, 225 U.S. 501.)

Warehousemen subject to Federal regulation with respect to rates, discrimination, rebates, service and other matters might become subject to state regulations with respect to the same matters.

Even in an area traditionally the responsibility of the Federal Government because of its intimate relationship to international affairs, there might be troublesome conflicts. In the field of immigration, for example, an alien subject to comprehensive Federal registration procedures might find himself subject also to discriminatory and burdensome State legislation destructive of the personal protections afforded him by the Federal law. (See Hines v. Davidowitz, 312 U.S. 32).

It seems doubtful, indeed that Congress would want such results to flow from the passage of H. R. 3, but the difficulty with section 1 is that no one knows what specific results are intended or will ensue. At the end of a long series of lawsuits it is possible, as some of its proponents contend, that the courts might construe H. R. 3 as merely declaratory of existing law. Thus interpreted, the bill would be a useless piece of legislation producing untold confusion and burdening the courts with a rush of litigation to no avail. However, I doubt that any member of the Senate, or that any other person, can foresee with clarity the change this bill is intended to make. This is not merely the usual fear of litigation which accompanies all legislation. Usually such fear is as to a single field and is resolved with one or two cases. This bill will provoke litigation at every point of Federal-State conflict no matter how ancient and well settled.

It is thoroughly understandable that Congress should desire that its legislative intent be properly interpreted by the courts, but this understandable objective cannot be achieved by adding H. R. 3 to the statute books. Its passage would muddle and becloud not only these particular fields in which Congress desires legislation to change the effect of certain judicial decisions, but also innumerable fields wherein delicate Federal-

State relationships are now balanced as a result of long established court decisions, and fields which Congress in passing H. R. 3 would not interfere with if they were studied in detail.

S. 337 is prospective only and thus much less objectionable although it will still leave the question of the extent of change, if any, intended in existing rules of interpretation and although it will add difficulties in the case of amendments hereafter passed to statutes already in existence. It is possible that the amended statute would thereafter be forever subject to dual rules of interpretation, one for that part which would antedate the enactment of this bill and another for the additions or changes made thereafter. It is also possible that an amendment to an existing statute might be held to have the effect of making the entire statute subject to the new rules of interpretation. The confusion which would be created argues strongly against its enactment.

I understand that one other bill which relates to recent court decisions, S. 2646, may also be subject to debate. The Department's position as to it is fully explained in the letter of the Deputy Attorney General to you dated April 17, 1958.

In summary, permit to urge that action be withheld on H. R. 3 and to recommend instead passage of carefully studied precise measures such as S. 654, H. R. 13272, and H. R. 11477.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

Attorney General